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## **TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1954**

**No. 69**

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**JOE VALDEZ GONZALES, PETITIONER,**

**vs.**

**UNITED STATES OF AMERICA**

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**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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**PETITION FOR CERTIORARI FILED MAY 10, 1954**

**CERTIORARI GRANTED OCTOBER 14, 1954**

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**DOCKET ENTRIES**

1953

May 11	Indictment and Report filed
May 13	Warrant issued
May 14	Appearance
May 14	Arraignment - has counsel, Harold E. Leithauser stands mute, plea of not guilty entered - Bond \$2500.00
May 14	Bond in \$2500.00 filed - Arthur L. Woodham Surety
May 15	Transcript filed
June 14	Warrant filed
July 7	Waiver of trial by jury filed
July 7	Trial before the Court held and continued to July 8, 1953, Arthur J. Koscinski
July 8	Trial resumed and case taken under advisement with leave to file briefs
July 13	Motion for Judgment of acquittal filed
July 13	Subpoena filed
July 21	Appearance for defendant filed
September 22	Order denying motion for Judgment of Acquittal and finding defendant guilty, filed and entered - Arthur J. Koscinski
October 26	Defendant sent to imprisonment for three years and pays fine of \$500.00 - bond cancelled - Arthur J. Koscinski
October 26	Commitment issued
October 26	Notice of Appeal of Defendant filed - \$5.00
October 27	Proof of mailing filed
October 29	Transcript filed

**INDICTMENT**

**THE GRAND JURY CHARGES:**

That on or about February 19, 1953, in the Eastern District of Michigan, Southern Division, JOE VALDEZ GONZALES, after having been duly and regularly notified to report for induction by Michigan Local Draft Board No. 95, Wayne County, Michigan, did report for induction but refused to submit to induction; in violation of Section 462(b) U. S. C. Title 50 Appendix.

This is a true bill.

[Signature]  
Foreman.

KENNETH W. SMITH  
Assistant U. S. Attorney

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## TRANSCRIPT OF PROCEEDINGS AND TESTIMONY

[Tr. 1]

DISTRICT COURT OF THE UNITED STATES  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA, <div style="text-align: right;">Plaintiff,</div>	}	Criminal Docket #33712
vs.		
JOE VALDEZ GONZALES, <div style="text-align: right;">Defendant.</div>	}	

Proceedings had and testimony taken in the trial of the above-entitled case before the Honorable Arthur A. Koscinski, District Judge, at the Federal Building, Detroit, Michigan, commencing on Tuesday, July 7, 1953.

\* \* \*

[Tr. 5]

THE COURT: Do I understand that in this case, as in the other cases, there is a waiver of a trial by jury? Is that correct?

MR. LEITHAUSER: That is correct, your Honor.

\* \* \*

[Tr. 6]

JEAN GERTRUDE COCKERILL was thereupon called as a witness on behalf of the Government and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GREENBERG:

Q Mrs. Cockerill, you are the Clerk of the Local Board 95?

A I am.

Q That Board is in Wayne County?



*Jean Gertrude Cockerill, direct (Gov't)*

[Tr. 7]

A Yes.

Q Do you have the file for one Joe Valdez Gonzales?

A Yes.

Q I can't hear you. Louder, please.

A Yes.

MR. GREENBERG: Your Honor, please, I would like to enter the file.

THE COURT: Have it marked as an exhibit.

(The Selective Service file was marked Government's Exhibit No. 1 by the reporter.)

\* \* \*

[Tr. 9]

Detroit, Michigan,  
Wednesday, July 8, 1953.

\* \* \*

JEAN GERTRUDE COCKERILL thereupon resumed the witness stand and, having previously duly sworn, testified further as follows:

\* \* \*

DIRECT EXAMINATION (Continued)

\* \* \*

[Tr. 10]

THE COURT: Can't we do this in this case? Can't it be stipulated that all of these proceedings leading to induction were regular, with whatever exceptions the defense has to make here, and then dwell on the matters that are important here?

\* \* \*

[Tr. 11]

MR. LEITHAUSER: As I told your Honor yesterday, we have no desire to spring our defense as a surprise. In this

*Discussion Between Court and Counsel*

particular case we are willing to stipulate to the facts; that the defendant is within the territorial jurisdiction of this particular court; that they have physical jurisdiction over him; that they sent him a questionnaire and that he stated in there that he was a minister and he requested a "conscientious objector" form, and the Draft Board, in the

[Tr. 12]

course of its business sent him a "conscientious objector" form; that he returned it, and, in support of that form, that he included two affidavits, and thereafter the Draft Board classified him "3-A" and promptly sent him a notice of his classification.

THE COURT: "3-A" would be what?

MR. LEITHAUSER: Dependency classification, your Honor. They classified him 3-A and sent him a card in the regular course of business, as they were required to do.

He requested a personal appearance timely, within the time allowed him to do so.

THE COURT: Does the Court understand that he objected to the classification of 3-A?

MR. LEITHAUSER: That's correct, your Honor. He objected to that.

THE COURT: And you maintain he was entitled to a classification of what?

MR. LEITHAUSER: Conscientious objector and/or minister, 4-E and/or 4-D.

The file was then sent to the Appeal Board.

THE COURT: Did he then have a personal appearance?

MR. LEITHAUSER: Not at that time. He requested it but he wasn't granted it.

THE COURT: Did he ever have a personal appearance—

MR. LEITHAUSER: Yes, sir. At that time he did not,

[Tr. 13]

but later they found the error of their ways and they

*Discussion Between Court and Counsel*

granted him a personal appearance.

THE COURT: He was granted a personal appearance?

MR. LEITHAUSER: Yes.

THE COURT: Was he permitted to state his case before the Board?

MR. LEITHAUSER: No.

THE COURT: That's one of the issues in this case: although he was granted a personal appearance before the Board he was not permitted to state his issues?

MR. LEITHAUSER: That is correct, your Honor. That would be one of our defenses. A portion of the transcript of the personal appearance appears in the file.

Then he was sent his classification card and he was ordered to report for his physical examination, as was required, and he did so report. He filed an appeal and he was permitted to do so. And he had a hearing before a hearing officer. As I recall, it was the same hearing officer who testified in court yesterday on a previous case, Mr. John C. Ray.

Those are the procedural facts and we will—

THE COURT: Then, as far as this case is concerned, there are two matters which the defendant claims were wrong: The first one is the classification, he was placed in 3-A whereas he claims he should have been placed in 4 something, I think.

[Tr. 14]

MR. LEITHAUSER: 4-E and/or 4-D.

THE COURT: As a conscientious minister as his religion?

MR. LEITHAUSER: That is correct, your Honor.

THE COURT: And the second issue here is that while he had and did take the opportunity and did appear before the Board, made a personal appearance to state his case, that he was not permitted to state his case and the reason for his claimed conscientious objection as a minister. Those are the two issues?

*Discussion Between Court and Counsel*

MR. LEITHAUSER: Those are the two obvious issues I would say. There are other issues. If the Court wishes, I will enumerate them at this time. They have nothing to do with the procedure as appears from the file, though—one does, too. One was the same question that was raised before the Court yesterday relative to the report of the hearing officer, the absence of the report of the hearing officer in the file.

If your Honor recalls, it's a system where, as the Assistant Attorney General digests the hearing officer's report—

THE COURT: The absence of the hearing officer's statement in the file?

MR. LEITHAUSER: That is correct, your Honor.

THE COURT: Why don't we proceed, then, in

[Tr. 15]

accordance with that order inasmuch as the stipulation or admission of counsel of the other procedural steps is that they have been taken in accordance with the law, with the exception of these few stated now?

MR. GREENBERG: I just want to get it straight once more as to what steps he is contending have not been properly taken on.

THE COURT: I can't hear you.

MR. GREENBERG: I want to know what the contention of the defense counsel is again as to the three steps that are not met.

THE COURT: Well, here is how the Court understands them:

The first one is that he was wrongly classified in the 3-A Class instead of 4-E.

MR. LEITHAUSER: Or 4-D.

THE COURT: 4-E or 4-D.

MR. LEITHAUSER: That is on the Local Board level. We make our objection at the Local Board level.

*Discussion Between Court and Counsel*

MR. GREENBERG: Because of arbitrariness, is that right?

THE COURT: Well, it wouldn't make any—well, I don't know. I don't want to speak for defense counsel. He stated to the Court that he was wrongly classified under 3-A, under the evidence in the case, which was available to the

[Tr. 16]

Local Board, and evidence which he was ready to produce but was prevented by the Board from producing.

Do you accept that statement, Mr. Leithauser?

MR. LEITHAUSER: I will accept that statement; yes, your Honor.

THE COURT: All right, that's the second issue. And the third issue is that the hearing officer's statement was not placed in the file on appeal in accordance with the requirement of the law.

MR. GREENBERG: I will object to that, your Honor. Is your Honor assuming that that is a requirement of the law, that the hearing officer's report be placed in the—

THE COURT: I am assuming nothing, counsel. I asked defense counsel and he readily agreed to state his defenses now so we need not go through the whole file and prove that he was registered, to prove that he was this, that and the other, with the exception of the issues that are made now before the Court pursuant to the statement of defense counsel.

MR. LEITHAUSER: We have one or two other defenses we will interpose that are not relevant to the chronological order of the material in the file. We will object to the fact that the material that had been compiled by the FBI was never made available to the Appeal Board.

MR. SMITH: Of course, your Honor, that is the

[Tr. 17]

Nugent case. I would like to advise counsel that that has been settled by the Supreme Court. There isn't any question

*Discussion Between Court and Counsel*

about that.

MR. LEITHAUSER: We are not too convinced that that has been settled by the Supreme Court.

\* \* \*

[Tr. 18]

MR. GREENBERG: Yes, your Honor. I just want a little clarification on this point one that was raised. As I understand it, the question of wrong is opposed to the question of being arbitrary. If the question is arbitrary, the Government is prepared to argue that question. The question of wrong—I don't believe the Government has to maintain a position of right or wrong.

THE COURT: Well, I think, of course, both counsel will agree that neither this court nor any other body outside the Selective Service proceedings may substitute its judgment for the judgment of the Board, so long as the registrant was present and received the right to present his case. That is what I assume the defense claims here, that the classification was an arbitrary one.

Is that what you claim?

[Tr. 19]

MR. LEITHAUSER: That's right, your Honor, without any basis in fact.

THE COURT: Yes, without any substance in fact.

MR. GREENBERG: Thank you, your Honor.

Q (By Mr. Greenberg) Witness, the registrant in this particular case was granted a personal hearing before the Board, is that correct?

A That's right.

Q Do you have a record of that personal hearing and a record of the demand for a personal hearing?

A Yes.

Q If you will read to the Court, first, the demand of the registrant for a personal hearing.



*Jean Gertrude Cockerill, direct (Gov't)*

\* \* \*

[Tr. 20]

THE COURT: All right, you may state what that stamp is on the bottom of that.

A It is the date that we received his request for personal appearance.

THE COURT: What is that date?

A January 16, 1952.

THE COURT: Stamped with the Board's stamp?

A Yes.

Q (By Mr. Greenberg) January 16, 1952. I wonder if you would

[Tr. 21]

read to the Court—pardon me, strike that. Do you have a memorandum of the testimony taken at the time of the personal hearing before the Board?

A Yes, I do.

Q That is in the file?

A Yes.

\* \* \*

[Tr. 33]

JOHN C. RAY was thereupon called as a witness on behalf of the Government and, having been first duly sworn, testified as follows:

# DIRECT EXAMINATION

BY MR. GREENBERG:

\* \* \*

Q You are a hearing officer for the Selective Service?

A I am.

[Tr. 34]

Q And you act on behalf of the Justice Department?

A That, I do.

Q You have handled the case for the Selective Service of Joe V. Gonzales, an appeal from Local Board No. 95,

*John C. Ray, direct (Gov't)*

Selective Service No. 209531424?

A I did.

Q I would like to show you this and ask you if this is your signed report filed with the Justice Department? (Handing a document to the witness.)

A Yes, it is. My signature appears on this.

Q This is a report of your hearing?

A Yes, sir.

MR. GREENBERG: Your Honor, I would like to offer this into evidence.

THE COURT: All right, have it marked.

(Report of the Hearing Officer was thereupon marked Government's Exhibit No. 2 for identification by the reporter.)

\* \* \*

[Tr. 35]

THE COURT: Well, I think the Court will accept it in evidence and give it such consideration or lack of consideration as under the law and circumstances appearing in this case it ought to have or ought not to have. We are trying this case without a jury. And, after the case is completed, the Court will take it under consideration.

\* \* \*

[Tr. 37]

Q (By Mr. Greenberg) Now, this is your hearing, conducted by you?

A Yes, it is.

Q With the registrant present?

A That is correct.

[Tr. 38]

This Exhibit No. 2 is a report which was prepared by myself in my office with respect to the hearing which I conducted in regard to registrant Joe V. Gonzales. The regis-

*John C. Ray, direct (Gov't)*

trant appeared at the scheduled hearing at the United States Attorney's Office on August 5, 1952—

\* \* \*

A (Continuing) The registrant appeared at the scheduled hearing at the United States Attorney's Office on August 5, 1952,

[Tr. 39]

accompanied by his wife, Guadalupe Gonzales, and Howard A. Graffis and Clara Mahn, of 476 West Grand Boulevard, Detroit. The latter two individuals are Jehovah's Witnesses and belong to the same *unite* of the sect as the registrant.

Registrant was born July 22, 1931 in San Antonio, Texas, wherein he attended grade and high schools. He left the Edison High School of that city in June of 1948 after two years attendance. He then took employment with the Grum Roofing and Construction Company of San Antonio, and worked for that company until the summer of 1949 as a sheet metal worker. He married his present wife on September 28, 1948.

THE WITNESS: (Continuing) In the summer of 1949 the couple came north working as harvest hands, following the harvest operations up to Minnesota. They came to Detroit in the fall of 1949 where registrant obtained employment as a laborer at the Adams Lumber Company in September of 1949 and worked for that firm until July of 1950. Then he obtained

[Tr. 40]

employment on August 18, 1950 at the Great Lakes Steel Corporation as a laborer, where he is employed at the present time.

Registrant previously was a Catholic. He has five sisters and a younger brother residing in Texas and California, all of whom are Catholics. His parents were Catholics. His mother is dead but his father is living at 338 Melrose Place,

*John C. Ray, direct (Gov't)*

San Antonio, Texas. Registrant's wife became a Jehovah's Witness in 1941 and registrant became interested in the sect in the latter part of 1949 and was baptized therein in February, 1950. In October, 1950, he became a "Pioneer" in the sect, which means that he is "permitted" to devote 100 hours per month to religious activity. He participates in the usual activities of the sect, attending the several weekly meetings of his unit and including the "Theocratic Ministry School". He also does the usual Saturday and Sunday morning work of selling the sect's publications on street corners and making house-to-house calls.

Registrant claims that he should be classified as an ordained minister by virtue of his baptism in the Jehovah's Witness sect in February of 1950. He also alternatively claims that he is a conscientious objector by virtue of being a member of the sect. These claims are predicated upon the usual scriptural grounds advanced by Jehovah's Witnesses. Registrant would not accept any non-combatant service either in the field or in the hospitals. He abhors communists but would not defend the U. S. against invasion by them. He disclaims being a

[Tr. 41]

pacifist and if attacked would defend himself to the point of taking life.

**SUMMARY OF THE CONTENTS OF THE FBI REPORT:**

Registrant was born in San Antonio, Texas on July 22, 1931, and married his present wife on September 28, 1948. He attended school in San Antonio, Texas from 1938 to 1948, coming to Detroit in the fall of 1949. His mother is dead and his father is living at 338 Melrose Place at Santonio, Texas. Both parents were of the Catholic faith.

Neighborhood investigation discloses that registrant is well regarded in the several communities in which he has lived and that he and his wife are said to be very religious.

*John C. Ray, direct (Gov't)*

They are said to have held Bible studies and meetings in their apartments and appear to devote considerable time to religious work. Investigation at the Grand River and Henry Kingdom Hall Unit of the Jehovah's Witnesses, to which registrant belongs, discloses that he is a devoted member of the sect and applies himself earnestly to his religious work. Registrant serves as an advertising servant and supervisor of distribution of "Watchtower" and "Awake" magazines for his unit. The unit records showed that for the period from February 1950 to September 1950 registrant worked at least twenty hours each month doing public preaching, distributing literature, conducting Bible studies and making "back calls" for interested persons. After this, the registrant became a "Pioneer" in the

[Tr. 42]

Jehovah's Witnesses and all of his records are said to be maintained in the main office in Brooklyn, New York. As a "Pioneer" he is required to put in a minimum of 100 hours of religious work per month.

**EDUCATION:**

Registrant attended schools in San Antonio, Texas and left the Edison High School of that city in 1948 after two years attendance.

**EMPLOYMENT:**

From the summer of 1948 to the summer of 1949 he worked for the Grum Roofing and Construction company as a sheet metal worker. He then worked with his wife as a harvest worker following the harvest from Texas to Minnesota and came to Detroit in the fall of 1949 where he obtained employment with the Adams Lumber Company and worked as a laborer until June, 1950. In August, 1950 he obtained employment with the Great Lakes Steel Corporation as a laborer and is so employed at the present time. At the Adams Lumber Company he was remembered as a

*John C. Ray, direct (Gov't)*

good worker but did not appear to be overly religious. Records also show that he was employed by the McVeigh Plating Company of that city from June 1950 to July 1950. The work was of a temporary nature and the employers remembered little about registrant. At the Great Lakes Steel Corporation his record is good and contains no derogatory information. He is listed as a laborer and general maintenance man.

[Tr. 43]

CREDIT AND CRIMINAL RECORD:

None.

CONCLUSION:

Registrant appeared to be a sincere Jehovah's Witness and as such is conscientiously opposed to war. He refuses *combatent* or non-combatant service and claims classification as an ordained minister by virtue of his baptism in the Jehovah's Witnesses sect in February, 1950. As is customary with Jehovah's Witnesses, registrant claimed that his regular bread-earning work was merely an avocation and that his ministry was his true vocation. Besides his claim of being a minister, registrant also alternatively claimed to be a conscientious objector. He disclaimed being a pacifist and under certain circumstances, if attacked, would defend himself and members of his family to the point of taking life.

Although registrant is a "Pioneer" in his religious sect, and devotes at least 100 hours a month in religious activity, his affiliation with the sect has been too recent to warrant acceptance thereof as a deep-seated conviction. Until the fall of 1949 he was a Catholic and his conversion to the Jehovah's Witnesses is too closely related to his selective service status to be accepted yet as genuine.

RECOMMENDATION:

Claims of ministerial and conscientious objector classi-



*John C. Ray, direct (Gov't)*

fication not established. Class 1-A classification

[Tr. 44]  
sustained.

Signed "John C. Ray."  
"Dated: August 11, 1952."

Q (By Mr. Greenberg) Mr. Ray, do you see the registrant in the courtroom?

A Yes, I do, he is sitting behind counsel in the courtroom there.

Q On the occasion of this hearing, did you at any time prevent the registrant from submitting any evidence?

A None whatsoever. He brought over two friends of his and I gave him considerable amount of time to present his case.

Q You allowed him to say everything and show everything that he wanted?

A Yes, I did.

Q You sent this report where?

A I sent this report on August 11, 1952, in quadruplicate, to T. Oscar Smith, Special Assistant to the Attorney General, at Washington, D. C.

\* \* \*

### CROSS-EXAMINATION

By Mr. LEITHAUSER:

\* \* \*

[Tr. 45]

Q Do you have any independent recollection of the hearing of this particular registrant?

A Yes, I have, of this particular registrant.

Q Will you tell the Court what independent recollection you have that does not appear in your report, a recollection perhaps of some conversations that occurred between you and the defendant or occurred between you and

*John C. Ray, cross (Gov't)*

witnesses whom the defendant had brought to corroborate his claim? Conversations which might be significant to the Court in a hearing of this type today.

A There was nothing of particular significance that was not reflected in my report.

As in all of these cases, I would test the religious knowledge of the registrant by asking him questions to test his convictions, and the like.

[Tr. 46]

Q Do you recall whether or not you applied this test to this particular defendant?

A Yes, I did.

Q Did you ask him biblical questions, as you stated?

A I asked him on what grounds he based his convictions and he gave me the usual ones which I have had from other Jehovah's Witnesses, and some of these answers would vary from case to case.

Q And was he able to satisfy you that he had biblical bases for his position?

A Well, he gave me citations, biblical citations.

Q Would you say that he had passed that test you applied? You spoke of it as being a test.

A Well, it is not in the form of a test.

Q I'm using your words instead of mine.

A It would be a test to the extent of satisfying myself to the extent of indicating that he had a knowledge of reading the Bible.

Q Well, did you conclude that he had applied himself?

A Yes. That test, however, would not be conclusive, of course.

Q I'm appreciative of that fact. If you will just answer the questions, Mr. Ray. I read from your conclusion which you have just read into the record:

"Registrant appeared to be a sincere Jehovah's

*John C. Ray, cross (Gov't)*

Witness and as such is conscientiously opposed to war."

[Tr. 47]

That is your statement?

A That is my statement. I dictated it.

Q Is there anyone that revises the dictation you give?

A No one.

Q There is no question that this is your particular statement?

A That is my language, my dictation.

A This is your conviction of the matter at this particular point?

A That's my language.

Q Yes. And I assume when you stated it you meant it to be true?

A Yes. Otherwise, I wouldn't—

Q Yes. I repeat it to you one more time:

"Registrant appeared to be a sincere Jehovah's Witness and as such is conscientiously opposed to war."

Yet a little later in the conclusion, Mr. Ray, you say "I don't feel this man should be classified as a conscientious objector." How do you reconcile those two statements?

A Well, will you read that first statement over again?

Q (Reading): "Registrant appeared to be a sincere Jehovah's Witness and as such is conscientiously opposed to war."

A Yes.

Q Yes, of course, I read it twice so we could impress it upon the Court and myself.

A I read it—"registrant appeared"—

Q What did you mean by the word "appeared"? Did you mean appeared to you?

A That is correct.

*John C. Ray, cross (Gov't)*

[Tr. 48]

Q Did you get the impression that he was a sincere Jehovah's Witness?

A He appeared, that's right.

Q Do you have a record of saying a word about which there was some question in your mind—you were under the impression he was a sincere Jehovah's Witness?

A That is correct.

Q Then how do you reconcile the statement later in the conclusion wherein you say "I don't think he should be classified 1-O"?

A Because his adoption of the Jehovah's Witness sect was too closely affiliated with his registration with the Selective Service. He was baptized in the Catholic faith, all of his family were Catholics, and he was such until 1948. Well, anyway, very, very close—may I see the file?

Q Well, the date doesn't seem to be too important. We'll take your word that it was close.

A It seemed to be contemporaneous with his registration.

Q I think the date is immaterial.

A It was material to me because I based my recommendation and conclusion upon the entire file.

Q I'll ask you this, Mr. Ray: Are you of the opinion that a person could not be a conscientious objector today because he was not yesterday? Do you understand my question, Mr. Ray?

A Yes, I understand your question very well. But I don't want to answer that as a general question. Let us be specific with the

[Tr. 49]

registrant, as I have had a number of these cases and a wealth of experience to draw upon and this particular case was an exceptional one.

*John C. Ray, cross (Gov't)*

[Tr. 51]

Q (By Mr. Leithauser) To be more specific, why did you feel in this particular case, Mr. Ray, that the proximity of the time when he became or claimed to become a Jehovah's Witness prevented him from being classified 1-O?

A Based upon his antecedents, his religious background, the proximity of his conversion or adoption of the Jehovah's Witness sect to his classification by the Selective Service and also the manner in which he claimed to be a Pioneer, which is a very unusual thing, as far as Jehovah's Witnesses are concerned. All of that added up to one thing to me. And I have had other cases where people would adopt a conscientious objector sect or a religious affiliation just in order to avoid induction or induction into military service.

Q Your only reason, according to your conclusions, for not classifying this person as a conscientious objector is the time

[Tr. 52]

element, is that correct?

A That was the element.

Q Sir?

A That was the principal element.

Q I mean from your conclusions?

A Yes.

\* \* \*

[Tr. 54]

JEAN GERTRUDE COCKERILL thereupon resumed the witness stand and, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION (Continued)

BY MR. GREENBERG:

Q Miss Cockerill, after this file was returned to you by

*Jean Gertrude Cockerill, direct (Gov't)*

the Appeal Board, did it contain any recommendation from the Justice Department?

A It did.

Q You have a letter from the Justice Department?

A Yes, I do.

\* \* \*

[Tr. 57]

THE COURT: I think the ruling of the Court should be, and it is, that the Court will overrule the objection and permit the letter to be received in evidence. And if the Court finds anything in there that is objectionable to the rules of evidence, the Court will take due notice of it and not consider it.

\* \* \*

[Tr. 61]

MR. LEITHAUSER: Precisely our position, your Honor. We make no claim that he should be classified 3-A.

[Tr. 62]

THE COURT: Does that answer your question?

MR. GREENBERG: Fine.

One more question, your Honor: Has he accepted the fact that he refused to be inducted?

MR. LEITHAUSER: It is stipulated.

\* \* \*

## CROSS-EXAMINATION

BY MR. LEITHAUSER:

\* \* \*

[Tr. 63]

Q Were you personally present at the time of that hearing before the Local Board?

A Yes, I was.

Q Were you present throughout the entire meeting?



*Jean Gertrude Cockerill, cross (Gov't)*

A I believe I was, except for maybe a few interruptions.

\* \* \*

[Tr. 64]

Q I have extracted this paper from the file. Will you read the typewritten portion from that paper? First give me the date when it was filed with the Board?

A (Reading): "April 3rd, 1951."

\* \* \*

[Tr. 66]

(The two affidavits just read by the witness were thereupon marked for identification Defendant's Exhibit No. 3 by the reporter.)

\* \* \*

[Tr. 67]

(A Special Form #150 for conscientious objectors was marked for identification Defendant's Exhibit No. 4, and a Watchtower card constituting Pioneer assignment was marked for identification Defendant's Exhibit No. 5 by the reporter.)

\* \* \*

[Tr. 68]

MR. LEITHAUSER: We would like to clarify, for the purpose of the record, the stipulation of the defendant refusing to submit to induction. We would like to stipulate that he did report to the induction center on the date that he was ordered to do so; that he went through everything he was directed to do; and when he was ordered to take one step forward which would place him under military jurisdiction, it was at that point that he refused to submit.

THE COURT: Well, the Court so understands.

MR. LEITHAUSER: Yes. The Supreme Court has made distinction in these cases and we want to make certain that

*Defendant's Motion for Judgment of Acquittal*

[Tr. 69]

this case comes within that purview.

THE COURT: He appeared for induction but refused to submit to induction.

MR. LEITHAUSER: He refused to take the step forward.

THE COURT: All right.

The Government rests.

MR. LEITHAUSER: May it please the Court, at this time we would like to make a motion for judgment of acquittal in this case.

. . .

MR. LEITHAUSER: Our motion, may it please the Court, is predicated on eleven different grounds.

[Tr. 70]

Ground number one: There is no evidence to show that the defendant is guilty as charged in the indictment.

Ground number two: The Government has wholly failed to prove a violation of the Act and Regulations by the defendant, as charged in this particular indictment.

Number three: The undisputed evidence shows that the defendant is not guilty as charged.

Number four: The denial of the conscientious objector status by the Local Board and the Board of Appeals and the recommendation of the Hearing Officer of the Department of Justice and by the Attorney General in his recommendation to the Appeal Board were without basis in fact, were arbitrary, were capricious, were contrary to the law and the Selective Service Regulations.

Number five: The recommendation of the Department of Justice, relied upon by the Board of Appeals, is arbitrary, capricious and illegal because it refers to artificial, fictitious and unlawful standards not authorized by the Act and Regulations and advises the Appeal Board to classify according to irrelevant and immaterial lines in determining that the defendant was not a conscientious objector when a

*Defendant's Motion for Judgment of Acquittal*

pursuit of the Act and Regulations was the only thing for the Hearing Officer and the Appeal Board to follow.

Number six: The undisputed evidence at the trial and that part of the record received into evidence shows that

[Tr. 71]

there was a violation of procedural rights of the defendant before the Local Board on personal appearance, because at the time he appeared before the Board they had their minds made up not to reconsider his case and all of his claims de novo, and they merely heard and listened to him with the intention of giving him the same classification given to him before the personal appearance so that he could appeal; accordingly there was no de novo classification by the Appeal Board upon personal appearance as though he had never before been classified, which violated Section 1624.2 of the Regulations.

\* \* \*

Number seven: The undisputed evidence shows that upon the trial the draft board members were prejudiced and discriminated against the defendant because of his membership in Jehovah's Witnesses, a religious organization, contrary to Section 1622.1, subparagraph (d) of the Regulations.

Number eight: The Local Board deprived the defendant, this defendant, of procedural right to a full and fair hearing before the Board of Appeals by failing to make an adequate and complete full written memorandum of the additional

[Tr. 72]

oral evidence given by the defendant upon the occasion of his personal appearance, which new and additional oral evidence does not otherwise appear in the written papers sent to the Board of Appeals.

Number nine: The undisputed evidence shows that the

*Defendant's Motion for Judgment of Acquittal*

draft board violated the regulations by denying the defendant his claim for classification as conscientious objector because he had pressed before the Selective Service System his claim for exemption as a minister of religion.

Number ten: The use of the secret and investigative report of the FBI without notifying or confronting the defendant with the substance of or the parts of it which were considered by or relied upon by the Hearing Officer upon the occasion of the hearing before the Department of Justice Hearing Officer and also the failure to include all of the evidence in the FBI report which was relied upon by the Hearing Officer, and all that appeared in the FBI report and that was considered by the Hearing Officer, and also their failure to put all of such evidence in the FBI report in the draft board files for the use of the draft Board of Appeals and the Court constitutes a deprivation of defendant's rights to procedural due process of law, in violation of the Fifth Amendment to the United States Constitution, and is also a clear and unequivocal violation of the Selective Service Act of 1948, otherwise known as the Universal Military Training and Service Act and

[Tr. 73]

the regulations promulgated thereunder, being Regulation No. 1622.1, sub-paragraph (b).

And number eleven: The use of the report of the Hearing Officer of the Department of Justice and reliance upon it by the Assistant to the Attorney General without notifying or confronting the defendant with the substance of the report, and also the failure to include the entire report of the Hearing Officer relied upon by the Assistant to the Attorney General in the draft board file for the use of the Appeal Board and the court constitutes a deprivation of the defendant's right to procedural due process of law, in violation of the Fifth Amendment to the United States Constitution, and is also a clear and unequivocal violation

*Defendant's Motion for Judgment of Acquittal*

of the Selective Service Act of 1948 and the regulations promulgated thereunder.

On those bases we will found our motion for a judgment of acquittal.

THE COURT: The Court will reserve decision on the motion.

JOE VALDEZ GONZALES was thereupon called as a witness in his own behalf and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LEITHAUSER:

\* \* \*

[Tr. 74]

Q You heard this morning testimony by the Clerk of the Local Board 95 relative to the personal appearance that you had before the Board?

A Yes, I heard some of the testimony.

Q Did you hear the Clerk of the Board read the transcript of the testimony that was taken at that hearing?

A I did.

Q Do you recall that particular hearing?

A I do, yes.

\* \* \*

Q Do you have anything to add to that transcript? In your mind, is that a complete transcript of the conversations between

[Tr. 75]

yourself and the members of the Board at that hearing?

A Well, I know that some parts of it, some of the answers that I gave this Chairman were not completely put down as I answered them. I know that to be a fact.

Q Do you recall any particular statement that was

*Joe Valdez Gonzales, direct (Deft)*

read into the record that was not your statement?

A No, I don't.

Q To what portion of the transcript do you make reference when you say it does not contain what you have said?

A Well, for instance, when I was asked the question why I work at the steel mill and if the steel mill didn't make any war implements that helped to destroy or kill people, I was asked if that didn't bother my conscience and I answered. The answer that I gave was that even if I worked on a farm or raised pigs and they were in turn sold to the market and the Government bought from the market, that it was beyond my control and it wasn't my affair. And the other part was put in, where I stated that I do the same when I pay my income tax, that it is beyond my control what the Government does with the money. And, as a matter of fact, it is not a business of mine.

Q Do you recall the conversation you had with the members of the Board specifically Mr. Gilmore and Mr. Sachs, relative to your rendering unto Caesar?

A Yes, I remember that.

Q The statement was made by Mr. Gilmore: "Who would be the

[Tr. 76]

Judge of what things belonged to Caesar?"

Your answer: "The Judge as to what things belong to Caesar is God's Word—the Bible, which tells"—

Then in this transcript appears a series of as risks.

Did you add anything to that or is that your statement?

A I believe I added something to that. And, if I'm not mistaken, I went to quote from the Bible and it was brought up that they knew about it.

Q They knew about what?

A The answer that I was going to give them from the Bible.

Q What answer did you attempt to give them?

*Joe Valdez Gonzales, direct (Def't)*

A Well, I attempted to give them from the Thirteenth Chapter of Roman's where it specifically brings out that Christ Jesus is the reigning King and that he is the one who is in authority and to him we must be in subjection. And it also mentions in the Thirteenth Chapter of Roman's that it is Him who bears the sword, and it is He who is a Judge for our good and a minister of God.

Q Those were the answers you intended to give to that?

A That's right.

Q Did you have a witness with you at that time?

A I had a witness with me.

Q And what was that witness' name?

A Paul C. *Trescot*.

[Tr. 77]

Q Did Mr. Paul *Trescot* testify before the Local Board?

A He wasn't given an opportunity.

Q Did you request the opportunity to have this witness appear before the Board?

A I did.

Q And what was the reply of the members of the Board?

A First they said "Well, as soon as we are through with this hearing we will hear your witness" and then after we were through with the hearing I requested it again and they said "We'll take your word for it since you seem to be pretty sincere".

Q They did not permit Mr. Paul *Trescot* to testify?

A No, they didn't.

Q I direct your attention to the testimony of Mr. Ray, the Justice Department Hearing Officer. Do you recall approximately the day on which you had that conversation with him?

\* \* \*

A I don't very well recall the exact date but I do believe it was in the fall.



*Joe Valdez Gonzales, direct (Def't)*

Q Did you take any witnesses with you at that time?

A Yes, I took three.

Q What were the names of those three people?

[Tr. 78]

A Well, one of them was my wife, the other was Mrs. Clara Mahn and Howard A. Grafhs.

Q Were those people present throughout the course of the entire hearing?

A They were.

Q At no time was any one of them excluded?

A No.

Q Were they permitted to testify?

A They were.

Q Were you permitted to testify?

A I was.

Q Were you permitted to tell Mr. Ray all that you wished to tell him?

A That, I was denied.

Q Why do you say you were denied that privilege?

A For instance, when I wanted to quote from the Bible on what I was basing my belief and my conversion from Catholic to one of the Jehovah's Witnesses Mr. Ray said that he had heard that many times before, that he had had some of these cases come before him and he knew the answers that we gave from the Bible. So the only chance that I had was when I was going to quote from the Book of James I remember that I was going to quote and he said that that was all right, that he just put down the Fourth Chapter of James because he knew what I was going to talk about.

[Tr. 79]

Q And he did not give you an opportunity to state your reasons personally?

A Not from a scriptural standpoint, as I would have

*Joe Valdez Gonzales, cross (Def't)*

liked, no.

\* \* \*

# CROSS-EXAMINATION

BY MR. GREENBERG:

Q Mr. Gonzales, I take it, in your discussions of what happened before the Local Board, that the transcript of what occurred, that was written by the Clerk, was false?

A Not in its entirety, no.

Q It was false in part?

A Yes, that's right.

Q Something was left out?

A Yes.

Q Did you ask for a copy of that transcript?

A I did.

Q Did you receive one?

A No, not until later.

Q It wasn't typed then, was it?

A No.

Q But you did receive one?

[Tr. 80]

A At a later date.

Q I will show you this and ask you if that is your signature?

A Yes, that is my signature.

Q Is that your handwriting all the way through?

A It is.

THE COURT: Will you have it marked first?

(A request for transcript of hearing in registrant's own handwriting was marked for identification Government's Exhibit No. 6 by the reporter.)

\* \* \*

*Joe Valdez Gonzales, cross (Def't)*

[Tr. 81]

Q (By Mr. Greenberg) Did you read your copy?

A After I got it, which was about—it must have been a year and a half later when I got it, the 2nd day of February. I read the copy then.

Q And you found things missing?

A That's right.

Q Did you go back to the Board and tell them?

A No, I did not.

Q You said before that the part you thought was missing was where you wanted to introduce Mr. *Trescot*, is that right?

A No.

Q What part was missing?

A The part is missing there on the answer that I gave when they asked me if it wasn't against my conscience to be working at the steel mill when it produced war implements.

Q What did you say that was not put in the record?

A Well, I notice that the answer is not as I gave.

Q How did you give your answer?

A I gave the answer, I told them that even if I raised hogs and

[Tr. 82]

in turn the hogs were sold to market and the Government bought from the market, that it was beyond my control and actually none of my business who the market sold the hogs to and then I brought in about doing the same thing when the income tax—

Q I will read you the statement that is on the transcript. It says:

"I feel I have to make my living someway even if I raised pigs, and I am still doing the same thing when I pay my income tax. I do not know where the money goes but that is not my business. 'Is rendering unto Caesar things that are Caesar's'."

*Joe Valdez Gonzales, cross (Def't)*

A That is where the part was left out.

Q Doesn't that say what you said you said?

A Before I bring in about the income tax, I bring in—

Q The income tax is in there, the pigs are in there, and where the money goes, and about it not being your business is in there.

A But before I bring in about the income tax I brought in that if these pigs are sold to market and in turn the Government bought from the market, that it was beyond my control.

Q Isn't the reason that you didn't complain is because your statement was pretty accurate here, isn't it?

A Well, the second part of it is, yes.

Q Did you work at Great Lakes Steel at the time?

A Yes, I did.

[Tr. 83]

Q Are you a pacifist?

A No.

MR. GREENBERG: I have no further questions.

**REDIRECT EXAMINATION**

By MR. LEITHAUSER:

Q What do you mean, witness, when you say you are not a pacifist?

A What I mean when I say I am not a pacifist is that under certain circumstances, and those would be only biblical, I possibly would defend myself.

Q Those circumstances being what?

A Biblical circumstances. By that I mean that if it were only a command from God, like it was in the time of the Israelites. In the times of the Israelites many wars were fought but it was simply because the nation of Israel represented God's Kingdom on earth and today there is no nation

*Finding of Guilty and Sentence*

that represents God's Kingdom on earth or that is the political expression of His Kingdom here on the earth.

\* \* \*

[Tr. 87]

Detroit, Michigan,  
Tuesday, September 22, 1953.

\* \* \*

MR. LEITHAUSER: I apologize for taking up the Court's time.

THE COURT: The Court was informed that you were before another Judge in this court.

In this case the Court has tried this matter some time ago and now files its findings. And, on the basis of the law and evidence pertaining to the facts, the Court finds the defendant guilty as charged.

A memorandum is being filed now and copies of this memorandum will be given by the Clerk to each counsel.

\* \* \*

[Tr. 89]

Detroit, Michigan,  
Monday, October 26, 1953.

\* \* \*

[Tr. 90]

THE COURT: The sentence in your case is a fine of Five Hundred (\$500.00) Dollars; that you be placed—that you be committed to the custody of the Attorney General of the United States to be placed in an institution to be selected by him for a period of three (3) years.

\* \* \*

---

## GOVERNMENT'S EXHIBIT NO. 1

(Selective Service File of Defendant)

[Immaterial portions of all printed, mimeographed, etc. form documents in this exhibit are omitted in printing. Written material (by hand, typewriter, etc.) is distinguished from printed-form wording by *italics*.]

SELECTIVE SERVICE SYSTEM  
COVER SHEET

Name (Last) *Gonzales* (First) *Joe* (Middle) *V.*  
Address *3805 6th* (City or town) *Detroit* (County) (State)  
*Michigan*  
Telephone                      Race *White*  
Selective Service Number *20 95 31 424*  
Date of Birth (Month) *July* (Day) *22* (Year) *1931*  
*Michigan Local Board No. 95*  
*Wayne County*  
*1050 West Fort Street*  
*Detroit, Michigan*  
(Stamp of Local Board)

Date of registration *January 4, 1950*

Date of mailing Questionnaire *February 28, 1951*

## Changes of Address:

1. (Number and street or R. F. D. number) *476 W. Grand Blvd* (Date) *9-8-50* (City, town, or village) *Detroit* (Zone) (State) *Mich.*
2. (Number and street or R. F. D. number) *3783 32nd* (Date) *3-9-51* (City, town, or village) *Detroit* (Zone) *10* (State) *Mich.*
3. (Number and street or R. F. D. number) *8538 Hamilton Apt. #12* (Date) *1-3-52* (City, town, or village) *Detroit* (Zone) (State) *Mich.*
4. (Number and street or R. F. D. number) *476 W.*

35a

*Cover Sheet*

*Grand Blvd.* (Date) *12-29-52* (City, town, or village) *Detroit*  
(Zone) *16* (State) *Mich.*

\* \* \*

Date	Classification	Date of Expiration
<i>4-10-51</i>	<i>3-A</i>	
<i>Appeal Bd 6-12-51</i>	<i>3-A</i>	
<i>1-8-52</i>	<i>1-A (acceptable)</i>	
<i>2-19-52</i>	<i>1-A</i>	
<i>Appeal Bd. 12-11-52</i>	<i>1-A</i>	

SSS Form 101

\* \* \*

SELECTIVE SERVICE SYSTEM  
CLASSIFICATION QUESTIONNAIRE

*MAR 9 1951*

[Local Board Stamp]

Selective Service No. *20 95 31 424*

Date of mailing *FEB 28 1951*

Date of birth: (Month) *July* (Day) *22* (Year) *1931*

Name: (Last) *Gonzales* (First) *Joe* (Middle) *V.*

Address: (Number and street or R. F. D. route) *476 W.*

*Grand Blvd.* (City, town, or village) *Detroit* (Zone)

(County) *Wayne* (State) *Mich.*

*Michigan Local Board No. 95*

*Wayne County*

*1050 West Fort Street*

*Detroit, Michigan*

(Stamp of Local Board)

*Government's Ex. No. 1—Selective Service File*

Notice to Registrant

\* \* \*

This questionnaire must be returned on or before  
*MAR 9 1951*

*John W. Gilmore*  
Member of Local Board

\* \* \*

SSS Form No. 100

[Page 2]

\* \* \*

Statements of the Registrant  
Series I.—Identification

\* \* \*

1. My name is (print) (Last) *Gonzales* (First) *Joe*  
(Middle) *V.*

\* \* \*

3. My address now is (Number and street or R. F. D.  
route) *3783 32nd* (City, town, or village) *Detroit* (Zone) *10*  
(County) *Wayne* (State) *Mich*

4. My telephone number now is (Town)  
(Exchange) *Ta.* (Number) *50309* . . .

5. My Social Security number is (If none, write  
"None") *455-42-2114*

Series II.—Present Members of Armed Forces

\* \* \*

[Page 3]

\* \* \*

Series III.—Prior Military Service

\* \* \*

Series IV.—Officials Deferred by Law

\* \* \*



*Classification Questionnaire*

Series V.—Sole Surviving Son

\* \* \*

Series VI.—Minister, or Student Preparing for the Ministry

\* \* \*

1. (a) I (am, am not) *am* a minister of religion. (b) I do, do not) *do* regularly serve as a minister. (c) I have been a minister of the (Name of sect or denomination) *Jehovah Witness* since (Month) *Feb.* (Day) *19* (Year) *1950* (d) I (have, have not) *have* been formally ordained. (e) If so, my ordination was performed on (Month) *Feb.* (Day) *19* (Year) *1950* by (Ecclesiastical official performing the ordination) *L. E. Reusch* at (City and State) *Detroit Mich*

\* \* \*

[Page 4]

Series VII.—Family Status and Dependents

1. (a) I am married *X* (b) I (do, do not) *do* live with my wife; . . . (c) We were married at (Place) *San Antonio Texas* on (Date) *Sept. 27, 1948*

\* \* \*

Series VIII.—Present Occupation

1. Every registrant must check each of the following boxes appropriate to his case and follow the instructions indicated. . . .

(b) I am now working in a nonagricultural occupation. *X*

\* \* \*

2. The job I am now working at is . . . *Crater bander and car checker*

3. I do the following kind of work in my present job . . . *Crater bander and car checker*

4. In my present job, I am . . . (a) A regular or permanent employee working for . . . other compensation *X*

I have worked *4* years in my present trade and I (do, do

*Government's Ex. No. 1—Selective Service File*

not) *do not* expect to continue indefinitely in it.

\* \* \*

5. My employer is *Great Lakes Steel Corp.—Michigan Steel Div. . . . Ecorse Detroit Michigan. . . .* whose business is *Steel products . . .*

6. (a) I was employed by present employer on (Date) *8-18-50*

(b) I entered job described in Statements 2 and 3, this series, on (Date) *8-19-50*

[Page 5]

(c) I am paid at the rate of *\$1.50* per hour *X . . .*

(d) I work an average of *40* hours per week.

\* \* \*

Series IX.—Agricultural Occupation

\* \* \*

[Page 6]

Series X.—Education

1. I have completed (Number) *8* years of elementary school, . . . and (Number) *2* years of high school.

2. I (was, was not) *was not* graduated from high school.

3. I have had the following schooling other than elementary and high school (if none, write "None"):

Name of College, University, Preparatory, Trade or Business School	Course of Study	Length of Time Attended, Degrees or Certificates Granted
--	-----------------	--

<i>Private instruction by Prof. H. Graffis</i>	<i>Bible</i>	<i>11-1949 Oct 1. 1950</i>
--	--------------	--------------------------------

Series XI.—Students

\* \* \*

Series XII.—Citizenship

\* \* \*

*Classification Questionnaire*

## Series XIII.—Court Record

\* \* \*

[Page 7]

## Series XIV.—Conscientious Objection to War

\* \* \*

By reason of religious training and belief I am conscientiously opposed to participation in war in any form and for this reason hereby request that the local board furnish me a Special Form for Conscientious Objector (SSS Form No. 150) which I am to complete and return to the local board for its consideration.

*Joe V. Gonzales*  
(Signature)

## Series XV.—Physical Condition

\* \* \*

## Registrant's Statement Regarding Classification

\* \* \*

The registrant may write in the space below or attach to this page any statement which he believes should be brought to the attention of the local board in determining his classification. *Regular or ordained minister.*

## Registrant's Certificate

\* \* \*

I, *Joe V. Gonzales*, certify that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by

*Government's Ex. No. 1—Selective Service File*

me in the foregoing (are, are not) are in my own handwriting.

(Signature or mark of registrant)

*Joe V. Gonzales*

\* \* \*

[Page 8]

\* \* \*

Dates	Minutes of Actions by Local Board and Appeal Board	Vote	
		Yes	No
3-27-51	SSS Form 150 mailed		
4/10/51	Class III A JG	4	0
APR 25 1951	Form SSS 110 mailed		
5/16/51	Forwarded to Appeal Board		
6/12/51	Classified III-A by Appeal Board Panel II F	3	0
6/15/51	Form SSS 110 Mailed to Registrant		
JAN 8 1952	1A . . .	3	0
JAN 11 1952	Form SSS 110 Mailed		
1/23/52	Hearing set for January 29, 1952		
1/29/52	Hearing adjourned by Board, Lack of quorum. JG		
1/29/52	Hearing set for February 4, 1952		
2/5/52	Hearing adjourned by Board. Lack of quorum. JG		
2/5/52	Hearing set for February 12, 1952		
2/12/52	No decision made on classification. Transcript of hearing in Cover Sheet		
2/19/52	Class 1A contd JG	3	0
2/19/52	Form SSS 110 Mailed		
2/19/52	Form SSS 223 Mailed Feb. 28, 1952		
2/25/52	Received appeal from registrant		

*Classification Questionnaire*

4/8/52	Received papers back from Fort Wayne		
4/8/52	Form DD 62 Mailed	Acceptable	
4/8/52	Forwarded to Appeal Board		
6/2/52	Forwarded to Department of Justice for advisory recommendation		
12/4/52	Returned from the Department of Justice		
12/11/52	Classified I-A by Appeal Board, Panel II F	3	0
12/15/52	Form SSS 110 Mailed		
FEB 3 1953	Form SSS 252 Mailed FEB 19 1953		

[Page 9]

\* \* \*

2/19/53	Refused to submit to induction
4/15/53	Reported to U. S. Attorney as delinquent
5/8/53	U. S. Attorney requested indictment by Grand Jury.

**DEFENDANT'S EXHIBIT NO. 5**

WATCHTOWER  
BIBLE AND TRACT SOCIETY  
Incorporated

Publishing      117 Adams Street      Brooklyn 1, N. Y.

Date OCT 1 1950 SC

This card constitutes your pioneer assignment to witness in territory of the Downtown Unit, Detroit, Mich. Company, obtaining territory locally from the servant.

*Defendant's Ex. No. 5—Pioneer Assignment Card*

This includes business districts. Please show this card to the company servant as his notification of your assignment. Return it to this office when you are through working there. Servant:

Your fellow witnesses,  
Watchtower Bible and Tract Society, Inc.

This assignment cancels all previous assignments.

---

Will supply further evidence, when sent form (SSS Form #150)

Truly yours  
Joe V. Gonzales

MAR 9 1951  
[Local Board Stamp]

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**DEFENDANT'S EXHIBIT NO. 4**

*III A JG 4/10/51*

**SELECTIVE SERVICE SYSTEM  
SPECIAL FORM FOR CONSCIENTIOUS OBJECTOR**

Selective Service No. *20 95 31 424*  
Name (Last) *Gonzales* (First) *Joe* (Middle) *V*  
Address (Number and street or R. F. D. route) *3783 - 32nd*  
*St.* (City, town, or village) *Detroit 10* (County)  
(State) *Mich*  
[Local Board Stamp]

This form must be returned on or before (Five days after date of mailing or issue) *April 2, 1951*

*Defendant's Ex. No. 4—Conscientious Objector Form*

\* \* \*

## Series I.—Claim for Exemption

\* \* \*

(B) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form and I am further conscientiously opposed to participation in noncombatant training or service in the armed forces. I, therefore, claim exemption from combatant training and service and, if my claim is sustained, I understand that I will, because of my conscientious objection to non-combatant service in the armed forces, be deferred as provided in Section 6 (j) of the Selective Service Act of 1948.

*Joe V. Gonzales*

(Signature of registrant)

*APR 3 1951*

[Local Board Stamp]

## Series II.—Religious Training and Beliefs

\* \* \*

1. Do you believe in a Supreme Being? Yes X . . .
2. Describe the nature of your belief which is the basis of your claim made in Series I above, and state whether or not your belief in a supreme being involves duties which to you are superior to those arising from any human relation.

*The basis for my believe is found in the ten commandments of God found in the Bible - Love of God and Love of neighbor - Anything that would cause me to violate these I couldn't do.*

[Page 2]

3. Explain how, when, and from whom or from what source you received the training and acquired the belief which is the basis of your claim made in Series I above.

*Through a home bible study conducted by one of Jehovas*

*Defendant's Ex. No. 4—Conscientious Objector Form*

*Witnesses by the use of Watchtower bible aids.*

4. Give the name and present address of the individual upon whom you rely most for religious guidance.

*Howard A. Graffis 5465 - 15th St Det. Mich*

5. Under what circumstances, if any, do you believe in the use of force?

*In protection of person and ministerial activities, but at no time in aggression.*

6. Describe the actions and behavior in your life which in your opinion most conspicuously demonstrate the consistency and depth of your religious convictions.

*In Dec. 1949 started out actively in the service of God, after some home Bible studies and on Oct 1 of 1950 was recognized as a pioneer. I here inclose my pioneer assignment card.*

7. Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim made in Series I above? If so, specify when and where.

*None other than that stated above*

### Series III.—General Background

\* \* \*

1. Give the name and address of each school and college which you have attended, together with the dates of your attendance; and state in each instance the type of school (church, military, commercial, etc.).

Name of School	Type of School	Location of School	Dates Attended	
			From-	To-
<i>Hidalgo</i>	<i>elementary</i>	<i>San Antonio, Texas</i>	<i>1938</i>	<i>1942</i>
<i>Will Rogers</i>	<i>intermediate</i>	<i>San Antonio, Texas</i>	<i>1942</i>	<i>1946</i>
<i>Edison High</i>	<i>High School</i>	<i>San Antonio, Texas</i>	<i>1946</i>	<i>1948</i>
<i>Divinity School</i>	<i>Ministry</i>	<i>Detroit, Mich.</i>	<i>1949</i>	<i>1951</i>



*Defendant's Ex. No. 4—Conscientious Objector Form*

2. Give a chronological list of all occupations, positions, jobs, or types of work, other than as a student in school or college, in which you have at any time been engaged, whether for monetary compensation or not, giving the facts indicated below with regard to each position or job held, or type of work in which engaged.

Type of Work	Name of employer	Address of employer	Period Worked	
			From-	To-
fountain boy	Almas Drugs	San Antonio, Texas	1945	1948
Labor	Kelly construction	San Antonio, Texas	1948	1948
Sheet Metal Worker	Green Roof-Const. Co.	San Antonio, Texas	1948	1948
Laborer	Adams Lumber Co.	Detroit, Mich.	1949	1950
Shipping and Crating Dept.	Great Lakes Steel	Ecorse Mich.	1950	1951

[Page 3]

3. Give all addresses and dates of residence where you have formerly lived.

Name of City, Town, or Village	State or Foreign Country	Street Address or R. F. D. Route	Dates of Residence	
			From-	To-
San Antonio	Texas	338 Melrose Pl.	1931	1948
San Antonio	Texas	202 Adams St.	1948	1949
Detroit	Mich.	3805 6th	1949	1950
Detroit	Mich	476 W. Grand Blv.	1950	1950
Detroit	Mich	3783 32nd	1950	1951

4. Give the name and address of your parents and indicate whether they are living or not.

*Father living Mother dead 338 Melrose Pl. San Antonio Texas*

5. (a) State the religious denomination or sect of your

*Defendant's Ex. No. 4—Conscientious Objector Form*

father *Catholic*

(b) State the religious denomination or sect of your mother *Catholic*

Series IV.—Participation in Organizations

\* \* \*

1. Have you ever been a member of any military organization or establishment? If so, state the name and address of same and give reasons why you became a member.

*No*

2. Are you a member of a religious sect or organization? (Yes or no) *Yes*. If your answer to question 2 is "yes," answer questions (a) through (e).

(a) State the name of the sect, and the name and location of its governing body or head if known to you. *Jehovah's Witnesses—governing body 117 Adams Street Brooklyn, New York*

(b) When, where, and how did you become a member of said sect or organization? *In Dec. 1949, in Detroit Mich, by actively serving*

(c) State the name and location of the church, congregation, or meeting where you customarily attend.

*Downtown Unit, 51 Sproat St. Detroit, Mich.*

(d) Give the name, title, and present address of the pastor or leader of such church, congregation, or meeting where you customarily attend.

*Presiding Minister P. C. Truscott 4846 Chatsworth Detroit 24 Michigan*

(e) Describe carefully the creed or official statements of said religious sect or organization in relation to participation in war.

*I am basing myself entirely on my knowledge of the Bible.*

3. Describe your relationships with and activities in all

*Defendant's Ex. No. 4—Conscientious Objector Form*

organizations with which you are or have been affiliated, other than military, political, or labor organizations.

*None*

[Page 4]

Series V.—References

Give here the names and other information indicated concerning persons who could supply information as to the sincerity of your professed convictions against participation in war.

Name	Full Address	Occupation or Position	Relation- ship to you
<i>Emma del Valle</i>	<i>3783 - 32nd St.</i>	<i>housewife</i>	<i>none</i>
<i>Howard A. Graffis</i>	<i>5465 15th St.</i>		
<i>P. C. Truscott</i>	<i>4846 Chatsworth</i>		

Registrant's Certificate

• • •

I, *Joe V. Gonzales*, certify that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing (are, are not) *are* in my own handwriting.

*Joe V. Gonzales*  
(Signature or mark of registrant)

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**DEFENDANT'S EXHIBIT NO. 3**

[Following two affidavits]

**TO WHOM IT MAY CONCERN :**

We, the undersigned members of Jehovah's Witnesses, hereby certify that we recognize Joe V. Gonzales to be a minister of the Gospel, that we have observed him regularly attending meetings for advanced study of the Bible and Bible prophecies and have also observed him regularly attending and taking part in the divinity school of Jehovah's Witnesses as well as performing other duties required of ministers of the Gospel. All of his said activities having been observed by us regularly during the past one and one-half years.

**SIGNED :**

Rhoda Hamilton  
Marshall Gamble  
Dolores L. Inks  
Pauline Zea  
Paul W. Hoffman  
Howard A. Graffis  
Elmond B. Taylor Sr.  
Bert M. Johnson  
Miles Ojakorich  
Roy C. Gamble  
James G. Zea

John J. Flory  
Annabelle Johnson  
Bessie Govalenti  
Doveimer Dortmann  
Jesse Montecinor  
Elmond B. Taylor Jr.  
Harvey E. Zekiel  
Irene H. Taylor  
Forrest G. Inks  
Stanley Barszozowski  
Archibald C. Milore

**APR 8 1951**

[Local Board Stamp]

Subscribed and sworn to before me this 1st day of April, 1951

**P. C. Truscott Notary Public**  
My commission expires August 24, 1954

*Defendant's Ex. No. 3—Affidavit*

TO WHOM IT MAY CONCERN :

We, the undersigned, certify that Joe V. Gonzales is conducting weekly Bible studies with us.

We recognize him to be a minister of the gospel and we receive spiritual benefit by his weekly visits.

J. Thompson  
L. B. Johnson  
B. O. Brown  
Caldonia Stephen

APR 8 1951

[Local Board Stamp]

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Local Board., #95

MAY 7 - 1951

[Local Board Stamp]

I'm requesting to appear in person before the board for a reconsideration of my classification as a 3A. It was *unsatisfactory* to me and dont think I was classified according to the information that I submitted.

Yours truly

Joe V. Gonzales

MAY 15 1951

Proceed with appeal

JG [Notation in margin]

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*Government's Ex. No. 1—Selective Service File*

SELECTIVE SERVICE SYSTEM  
INDIVIDUAL APPEAL RECORD

*May 16 1951*

[Local Board Stamp]

Name of registrant (Last) *Gonzales* (First) *Joe* (Middle) *V.*

Selective Service Number *20 95 31 424*

Classified by local board in Class *3-A* . . .

Date classified *April 10, 1951*

Forwarded on appeal taken by *Registrant*

Date forwarded to Appeal Board *May 16, 1951*

*Jean G. Seppi*

Member or Clerk of Local Board

Minutes of Action by Appeal Board

*Appeal Board Panel II for the State of Michigan*

(Street and Number) *435 Tussing Building* (City) *Lansing*

Classified in Class *III-A* until . . . by the following vote:

Yes *3* No *0* (Date of classification by Appeal Board)

*June 12, 1951*

*Margaret Lois Finn*

Clerk of Appeal Board.

\* \* \*

SSS Form 120

*May 17 1951*

Dear Friend:

This note is to ask for a personal appearance before the board, for further consideration of my classification, and further information, if needed. I remain

Yours truly

Joe V. Gonzales

JAN 16 1952

[Local Board Stamp]

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*Notice Granting Personal Appearance*

January 23, 1952

Joe V. Gonzales  
8538 Hamilton Apt. 12  
Detroit, Michigan

20-95-31-424

Dear Sir:

Your appearance before the Board has been granted for  
Tuesday, January 29, 1952 at 3:30 P.M.

By Direction of the Board  
Jean G. Seppi, Clerk

JGS

---

1/29/52

Gonzales  
appeared before board Hearing adjourned by Board. Lack  
of quorum.

J Gilmore  
Chairman  
P. O. Newton  
Bd Member

adj. 1 week. 2/5/52  
adj. to 2/12/52 JG

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2/12/52

Gonzales  
Claims he is a minister or C. O.  
Ordained in Feb. 1950.  
Pioneer in Oct. 1950.  
Employed at Gt. Lakes Steel - 8/18/50 to date  
Not a paid minister  
No certificate of ordination  
All activities are voluntary  
Advertising Servant for Downtown Area - Distributing  
magazines  
Meet various days for bible study  
Meet at various homes of members

*Government's Ex. No. 1—Selective Service File*

No church as such.

Does missionary work.

Theocratic Ministry School

Not a school of theology

Theocratic Aid to Kingdom Publishers a book outlining procedure.

No declaration in book or teaching directly outlawing war.

It is a matter of personal interpretation.

2/19/52 IA JG JCS IA PON

Reason for working -

Manufacturing materials for war

Would not aid injured if hurt in aggressive way or in battle.

"Render unto Ceasar" etc.

2/19/52

IA JG

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20-95-31-424

MICHIGAN LOCAL BOARD No. 95

WAYNE COUNTY

1050 West Fort Street

Detroit, Michigan

REPORT OF A HEARING OF JOE V. GONZALES BEFORE

THE BOARD MEMBERS OF LOCAL BOARD

NUMBER 95 ON FEBRUARY 12, 1952

4:00 PM

Board members present: Jola W. Gilmore, Chairman;  
Patrick S. Nertney, Secretary;  
and Joseph C. Sachs, member

Mr. Gilmore: Before you testify you have to take the oath.

Registrant: You mean the oath to tell the truth?



*Report of Personal Appearance*

Mr. Gilmore: Yes.

Registrant was sworn in by the chairman, Mr. Gilmore

Mr. Gilmore: What is your situation?

Registrant: My situation is that I want to be classified as a conscientious objector or minister but I want to get my minister's classification as I feel that I am a minister and I have been recognized as a minister.

Mr. Gilmore: What faith?

Registrant: Jehovah's Witness

Mr. Gilmore: Were you ordained?

Registrant: Yes, I was.

Mr. Gilmore: When was it?

Registrant: I was ordained in 1950.

Mr. Gilmore: When in 1950?

Registrant: I think it was in February.

Mr. Sachs: Ordained as a minister?

Registrant: Yes.

Mr. Gilmore: In your Form 150, in answer to question No. 6, you said, "On October 1, 1950 I was recognized as a pioneer and I enclose my pioneer assignment card." What is a pioneer?

Registrant: A pioneer is a person who attends full time. I give a hundred hours per month or about twelve hundred hours a year to ministerial activities.

Mr. Gilmore: Where are you employed now?

Registrant: I am employed at the Great Lakes Steel Corporation.

Mr. Gilmore: How much time do you put in there?

Registrant: I put in approximately forty hours a week.

Mr. Gilmore: The usual working week?

Registrant: Yes, but it doesn't interfere with my ministerial duties.

Mr. Gilmore: How long have you been working at Great Lakes Steel?

*Government's Ex. No. 1—Selective Service File*

Registrant: I would say about eighteen months. Since July 18, 1950 or possibly it was August 18, 1950.

Mr. Gilmore: In other words, you were working at Great Lakes Steel before you received your assignment. Why have you continued in this work?

Registrant: Because I found it did not interfere with my pioneering duties and it is not my wish to be a burden to anyone else.

Mr. Sachs: Are you paid by Jehovah's Witnesses?

Registrant: No, we are not paid ministers; we do it voluntarily. I have a witness out there who can verify all these statements. I will be glad to bring him in.

Mr. Gilmore: When we finish our questioning of you, we will have him in.

Mr. Gilmore: On what do you base your conscientious objection?

Registrant: On the teachings of the Bible that we should not kill and should love our neighbors as ourselves.

Mr. Gilmore: In Series IV, Section 2, Question E - the question is, "Describe carefully the creed or official statements of said religious sect or organization in relation to participation in war," and your answer here is, "I am basing myself entirely on my knowledge of the Bible." Is that correct?

Registrant: It is correct.

Mr. Gilmore: In other words, are we to understand that your claim as a conscientious objector is based entirely on your personal interpretation of the reading of the Bible?

Registrant: Yes.

Mr. Gilmore: You have submitted here a card referred to as "Pioneer Assignment." Is that what you claim to be the evidence of your ministers duties?

Registrant: Yes.

Mr. Gilmore: Do you have any other proof with you?

*Report of Personal Appearance*

Registrant: No, I have no other.

Mr. Gilmore: Do you have any definite ordination certificate?

Registrant: No, other than the ordination I previously described.

Mr. Gilmore: That is not the question. Do you have a definite certificate of ordination by a bishop or any other duly recognized church group?

Registrant: No, we do not have those. The hours we work; the missionary work we do and the knowledge we have of the Bible are all shown on a monthly report we turn in.

Mr. Sachs: This is all voluntary on your part?

Registrant: Yes.

Mr. Gilmore: Do you have any prescribed duties?

Registrant: I have some at present. I am the advertising servant of the downtown unit and I take care of all the advertising duties.

Mr. Sachs: All voluntary?

Registrant: Yes, we have two thousand magazines that I take care of each month. I see that they are distributed and if any more are needed.

Mr. Gilmore: Do you have any regular parish group, like an ordinary church?

Registrant: Yes.

Mr. Gilmore: Do you personally have any recognized parish in which you serve as a minister?

Registrant: I have my territory that I work.

Mr. Sachs: Do you have a congregation?

Registrant: Yes, we meet every Thursday and sometimes talks are handed to me that I should make and other times I conduct Bible studies with different people.

Mr. Gilmore: Does that study period always occur in the same place?

Registrant: They occur in homes. One of the sister's has given her home for the study and we also use the hall

*Government's Ex. No. 1—Selective Service File*

in the ministry school.

Mr. Sachs: You meet at the various homes of the members?

Registrant: Yes.

Mr. Gilmore: You do not have any church?

Registrant: No particular place of my own but I work with the downtown unit of Jehovah's Witnesses.

Mr. Gilmore: That work is necessarily performed after you do your regular employment at the Great Lakes Steel?

Registrant: Sometimes and sometimes not, when I am working midnights. I have sent a letter to the Great Lakes Steel that I would like to remain on the midnight shift for I must put my minister's duties first, and if it could not be done I would have to get another job but they worked it out for me.

Mr. Gilmore: Have you attended as a regular student in a recognized school of theology where you would receive ordination as a minister?

Registrant: Our minister's school is where we study.

Mr. Gilmore: Which one do you have?

Registrant: The Theocratic Ministry School.

Mr. Gilmore: Where is that?

Registrant: That is conducted at the hall at Grand River and Third.

Mr. Sachs: Is it a recognized school of theology?

Registrant: It is not. Well yes, it is if you want to call it that. I have a book here to show you how to study and understand the Bible and how to carry on the work.

Mr. Gilmore: What is the name of this book?

Registrant: "Theocratic Aid to Kingdom Publishers." I would like to refer to the contents of the book.

Mr. Sachs: When I said a recognized school, I meant if they are recognized.

Mr. Gilmore: Is it recognized by the state as a divinity school?

*Report of Personal Appearance*

Registrant: Yes, it is.

Mr. Gilmore: What state?

Registrant: The Society is recognized in New York.

Mr. Sachs: Then it would be recognized in New York but not in Michigan.

Registrant: No, it is not recognized in Michigan but we have schools all over the country.

Mr. Sachs: Is there any statement in your regular creed of Jehovah's Witnesses that relates directly to war?

Registrant: No, they have nothing relating directly to war. It is up to each one to go according to their own conscience.

Mr. Sachs: Individual consciences and not a set policy by the school?

Registrant: There are some Jehovah's Witness who have joined the army and navy and that is by their own conscience.

Mr. Sachs: This conforms with you original statement that it is your personal interpretation of the Bible.

Registrant: Yes.

Mr. Gilmore: Do you have anything further you wish to tell us?

Registrant: Just to tell you what you what a pioneer was and that I am the advertising servant of the downtown unit.

Mr. Gilmore: You have described to us that you do ministerial work.

Registrant: Just with the people in the homes and the reason that I work at the Great Lakes Steel and do work outside my ministerial duties is because; following the example as set forth by the Apostles, we are to work to support ourselves so that we will not be a burden to other people. This, I believe, is Acts 20, verse 34.

Mr. Gilmore: Doesn't the Great Lakes Steel manufacture articles that are used in war?

*Government's Ex. No. 1—Selective Service File*

Registrant: They do manufacture some articles that are used in war.

Mr. Gilmore: How does this affect you?

Registrant: It does not have any bearing in my belief anymore than my paying an income tax.

Mr. Gilmore: Would your conscience permit you to give assistance to an injured person?

Registrant: If they were not injured in aggression or if they were not in support of a political party, I would do so.

Mr. Gilmore: Are we to understand from that, that you would not assist persons injured in battle?

Registrant: No, I would not.

Mr. Gilmore: How is it you would help create articles of war that kill people?

Registrant: I feel I have to make my living somehow even if I raised pigs, and I am still doing the same thing when I pay my income tax. I do not know where the money goes but that is not my business. "Is rendering unto Caesar things that are Caesars."

Mr. Sachs: Since you are willing to give unto Caesar things belonging to Caesar, would you assist him in securing that which rightfully and honestly belongs to him even if it would be necessary to fight to secure that which rightfully and honestly belonged to Caesar?

Registrant: I would not give my life for Caesar because it does not honestly and truthfully belong to him. It belongs to God who gave it. Caesar's things which belong to him are those things such as - obeying his words so far as they are not in objection or against God's command.

Mr. Gilmore: Who would be the Judge of what things belonged to Caesar?

Registrant: The Judge as to what things belong to Caesar is God's Word - the Bible, which tells \* \* \* \*

Mr. Gilmore: Would you be the Judge of it?

*Report of Person's Appearance*

Registrant: Yes, by using the Word of God.

Mr. Gilmore: By your interpretation of the Word of God you would be the sole Judge of what belongs to Caesar, and what would be rendered unto Caesar?

Registrant: That is right.

Mr. Gilmore: Have you anything further to tell us?

Registrant: Not about that question.

Mr. Sachs: Anything in support of your statement, we want you to feel free to give us.

Registrant: While the statement is for not supporting Caesar because God's Word says not to kill, it states that friendship of the world, which is commerce and politics which makes up the world, is enmity with God.

Mr. Gilmore: Now, you mentioned a witness. What is the object of that?

Registrant: It is a Mr. Paul Truscott. The last time I was here I overlooked mentioning that Mr. Truscott is the servant who is supposed to sign my card. I showed it to him and he OK'd it and took it to sign.

Mr. Sachs: We believe you.

Registrant: I would like him to verify that I am a pioneer and that he signed by pioneer assignment.

Mr. Gilmore: Since you made these statements under oath, we do not doubt it.

Registrant presented copy of assignment of October 1, 1950 signed by "Servant: P. C. Truscott"

Mr. Sachs: Are you satisfied that everything is in the record that you want to be.

Registrant: I believe it is and I am satisfied.

Mr. Gilmore: Very well, we will advise you of the results of our deliberation.

Registrant: May I have a copy of the notes?

Mr. Gilmore: No, these are for our files.

Registrant: I would like to keep a copy of the testimony for reference so if you asked a certain question I



*Government's Ex. No. 1—Selective Service File*

would know what I answered.

Mr. Gilmore: We are not attempting in any way to cross-examine or to make it difficult for you to present anything you want. We will consider anything you present. You have made your statements here in the presence of the stenographer, the Board clerk, and three members of the Board. You know what you said and we know what you said and we will have a transcript of it. No one is going to try to distort it in any way, and we will consider it and make the decision.

Registrant: Very well.

Meeting closed at 4:50 PM.

TRANSCRIBED BY:

Marie A. Wischaw

APPROVED

John W. Gilmore

Chairman

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SELECTIVE SERVICE SYSTEM

ORDER TO REPORT FOR ARMED FORCES PHYSICAL EXAMINATION

[Left blank]

(Local Board Stamp)

*February 19, 1952*

(Date of mailing)

To (First name) *Joe* (Middle name) *V.* (Last name) *Gonzales* (Selective Service Number) *20 95 31 424*

You are hereby directed to report for armed forces physical examination at (Place of reporting) *Fort Wayne Induction Station 6301 W. Jefferson Gymnasium Detroit, Michigan* at (Hour of reporting) *7:30 A.M.*, on the (Day) *28th* of (Month) *February, 1952.*

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*Order to Report for Physical Examination*

[Signature]  
(Member or clerk of Local Board)

\* \* \*

SSS Form No. 223

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Joe V. Gonzales  
8538 Hamilton  
Det. 2, Michigan  
Feb. 20, 1952

Michigan Local Board No. 95  
Wayne County  
1050 West Fort Street  
Detroit, Michigan

*FEB 25 1952*  
[Local Board Stamp]

Dear Sirs:

In consideration of the classification, which I received this morning in which I was classified as a I-A I am writing for an appeal to the board, due to the fact, which I feel I was not classified according to the information that I have submitted.

Yours truly  
Joe V. Gonzales

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CERTIFICATE OF ACCEPTABILITY

Last Name-First Name-Middle Name Present Home Address  
*Gonzales, Joe Valdez 8538 Hamilton Detroit, Michigan*  
Selective Service Number *20 95 31 424*  
Local Board Address *Local Board No. 95, 1050 W. Fort St.*

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*Government's Ex. No. 1—Selective Service File*

*Detroit, Michigan*

. . .

*FEB 26 1953*

[Local Board Stamp]

Date	Place	Typed or stamped name and grade of joint examining and induction station commander
28 Feb 52	Detroit, Michigan	Clarence Carey, Major USAF
29 Feb 53		

Signature

*Clarence Carey*

DD Form 62 1 Nov 51

*FEB 25 1953*

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MICHIGAN STATE HEADQUARTERS  
SELECTIVE SERVICE SYSTEM

735 E. Hazel Street  
Lansing 12, Michigan  
14 April 1952

Board of Appeal  
Selective Service System  
435 Tussing Building  
Lansing, Michigan

Re: Joe V. Gonzales  
SS No. 20-95-31-424

Gentlemen:

Cover sheet for the above named registrant has been reviewed in this Headquarters, and it is believed that your Board of Appeal should now consider the evidence and determine the classification into which you believe the registrant should be placed.

If after reviewing the file of this registrant, your Board is not of the opinion that the evidence warrants a deferred

*Letter of State Headquarters to Appeal Board*

classification or classification in Class I-O, it will be necessary for you to process him in accordance with the Selective Service Regulations and refer his file to the office of the United States Attorney in view of the claims of conscientious objection.

Sincerely,  
Arthur A. Holmes  
Arthur A. Holmes  
Lt. Colonel, Infantry  
Acting State Director

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APR 16 1952

[Local Board Stamp]

14 April 1952

Board of Appeal  
Selective Service System  
435 Tussing Building  
Lansing, Michigan

Re: Joe V. Gonzales  
SS No. 20-95-31-424

Gentlemen:

Cover sheet for the above named registrant has been reviewed in this Headquarters, and it is believed that your Board of Appeal should now consider the evidence and determine the classification into which you believe the registrant should be placed.

If after reviewing the file of this registrant, your Board is not of the opinion that the evidence warrants a deferred classification or classification in Class I-O, it will be necessary for you to process him in accordance with the Selective

64a

*Government's Ex. No. 1--Selective Service File*

Service Regulations and refer his file to the office of the United States Attorney in view of the claims of conscientious objection.

Sincerely,  
Arthur A. Holmes  
Lt. Colonel, Infantry  
Acting State Director

AAH: ab  
cc: L. B. 95

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Appeal Board Panel II  
1120 May Street  
Lansing, Michigan  
June 6, 1952

Mr. Philip C. Hart  
United States Attorney  
Eastern District of Michigan  
813 Federal Building  
Detroit 26, Michigan

Re: Joe V. Gonzales  
Wayne County  
SS 20-05-31-424

Gentlemen:

The *Appeal* Board, Panel II, for the Eastern District of the State of Michigan, has reviewed the above named registrant's cover sheet and has determined that he should not be classified in either a class lower than Class I-O or

65a

*Letter of Appeal Board to U. S. Attorney*

in Class I-O, and action is therefore being taken under Section 1626.25 (4) of the Selective Service Regulations.

We are transmitting the entire file to you for an advisory recommendation thereon.

Very truly yours,  
By the direction of the Appeal  
Board, Panel II for the Eastern Federal Judicial District  
of the State of Michigan:  
[Signature]  
Clerk

Appeal No. 979

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SELECTIVE SERVICE SYSTEM  
Appeal Board for State of Michigan  
Panel No. 2 Eastern Judicial District  
1120 May Street  
Lansing, Michigan  
(Local Board Stamp)

July 3, 1952

JUL 7 1952

[Local Board Stamp]

Michigan Local Board No. 95  
Wayne County  
1050 West Fort Street  
Detroit, Michigan

Re: Joe V. Gonzales  
SS 20-95-31-424

Gentlemen:

In accordance with Section 1626.25 (4) of the Selective

*Government's Ex. No. 1—Selective Service File*

Service Regulations, we have forwarded the above cover sheet to the Department of Justice, Eastern District of Michigan, for the purpose of securing an advisory recommendation thereon.

Upon receipt of the cover sheet the Appeal Board will take action and the file will then be returned to you.

Very truly yours,  
By the direction of the Appeal  
Board, Panel II for the Eastern  
Federal Judicial District  
of the State of Michigan:  
M. L. Finn  
M. L. Finn, Clerk

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DEPARTMENT OF JUSTICE  
Washington, D. C.  
December 1, 1952

Chairman, Appeal Board, Eastern  
District of Michigan, Panel No. 2  
Selective Service System  
435 Tussing Building  
Lansing, Michigan

Re: Joe V. Gonzales  
S. S. No. 20-95-31-424

Dear Sir:

As required by section 6(j) of the Universal Military Training and Service Act, an inquiry was made in the above-mentioned case and an opportunity to be heard on his claim for exemption as a conscientious objector was given to the registrant by Honorable John C. Ray, Hearing Officer for the Eastern District of Michigan.

*Recommendation of Department of Justice*

Registrant was born July 22, 1931, in San Antonio, Texas. He left the Edison High School of that city in June, 1948, after two years of attendance and took employment as a sheet metal worker with a local firm. He married his present wife in September, 1948. In the summer of 1949 he came to Detroit and worked as a laborer for the Adams Lumber Company until July, 1950. From August, 1950 to present he has been employed as a laborer and general maintenance man at the Great Lakes Steel Corporation. Registrant previously was a Catholic and has five sisters and a brother all of whom are Catholics. His parents were Catholics. His mother is dead and his father lives in San Antonio, Texas. Registrant's wife became a Jehovah's Witness in 1941 and registrant was baptized a member in February, 1950. In October, 1950, he became a "pioneer" and he participates in the usual activities of his sect, attending several weekly meetings including the Theocratic Ministry School. He also does house to house work and sells the publications of the sect. Registrant bases his claim for exemption upon his own personal interpretation of the Bible with the guidance of the Watchtower Bible aids and relies particularly on the Ten Commandments. He believes in the use of force in self defense.

The investigation reflects that registrant is well regarded in the several communities in which he has lived and that he and his wife are said to be very religious. Neighbors advise that they hold Bible studies in their apartment and appear to devote considerable time to religious work. References and co-religionists state that he is a devoted member of the sect and applies himself earnestly to his religious work. Employment records reveal that registrant was remembered as a good worker and that his record is good and contains no derogatory information.

After a personal appearance, the Hearing Officer stated that registrant appeared to be a sincere Jehovah's Witness



*Government's Ex. No. 1—Selective Service File*

but concluded that his affiliation with that sect has been too recent and too closely related to his draft status to warrant the acceptance of his conscientious objector position as genuine. The fact that registrant became a member of the Jehovah's Witness sect one month after his Selective Service System registration in January, 1950, despite the fact that his wife had been a member for many years, lends weight to this conclusion.

After consideration of the entire file and record, the Department of Justice finds that the registrant's objections to combatant and noncombatant service are not sustained. It is, therefore, recommended to your Board that registrant's claim for exemption from both combatant and non-combatant training and service be not sustained.

The Selective Service Cover Sheet in the above case is returned herewith.

Sincerely,

T. Oscar Smith

T. Oscar Smith

Special Assistant to the Attorney General

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SELECTIVE SERVICE SYSTEM  
INDIVIDUAL APPEAL RECORD

*APR 8 1952*

(Local Board Stamp)

Name of registrant (Last) *Gonzales* (First) *Joe* (Middle)

V. Selective Service Number *20 95 31 424*

Classified by local board in Class *I-A . . .*

Date classified *February 19, 1952*

Forwarded on appeal taken by *Registrant*

Date forwarded to Appeal Board *April 8, 1952*

*Jean G. Seppi*

Member or Clerk of Local Board.

69a

*Classification by Appeal Board in I-A*

Minutes of Action by Appeal Board  
*Appeal Board Panel II for the State of Michigan* (Street  
and number) *1120 May Street (City) Lansing*  
Classified in Class *I-A* until . . . by the following vote:

Yes 3 No 0 (Date of classification by Appeal Board)  
*December 11, 1952*

*Margaret L. Finn*  
Member or Clerk of Appeal Board

\* \* \*

SSS Form No. 120  
*APR 10 1952*

*DEC 8 1952*  
*APR 15 1952*

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476 West Grand Blvd.  
Detroit 16, Michigan  
Selective Service No.  
20-95-31-424  
December 21, 1952

State Director  
Michigan State Selective Service Bureau  
Capitol Savings & Loan Building  
112 E. Allegan Street  
Lansing 4, Michigan

Dear Sir:

I have received notification of my classification as I-A  
from Local Board #95.

I request that you withhold induction notice until such  
time as you can review my case. Due to the fact that I am a  
minister of Jehovah's Witnesses and have been a Pioneer  
minister for over two years, I feel that an injustice has been  
done to me in classifying me as I-A. All the facts in my file

*Government's Ex. No. 1—Selective Service File*

show that I am a Pioneer, also an appointed servant in the local company of Jehovah's Witnesses, and because of this I feel that the local board has erred in this classification, and therefore I am appealing their decision.

Please look into the matter and advise me further.

Yours truly,

Joe V. Gonzales

Joe V. Gonzales

JVG:W

\* \* \*

DEC 29 1952

[Local Board Stamp]

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MICHIGAN STATE HEADQUARTERS  
SELECTIVE SERVICE SYSTEM  
Arnold Building, 1120 May Street  
Lansing 3, Mich.

5 January 1953

JAN 6 1953

[Local Board Stamp]

Michigan Local Board No. 95  
Wayne County  
1050 West Fort Street  
Detroit, Michigan

Re: Gonzales, Joe V.  
SS No. 20-95-31-424

Gentlemen:

It is requested that the Cover Sheet for the above-named registrant be forwarded to this Headquarters for review.

71a

*Letter of State Director to Local Board*

For the State Director,  
M. J. Stahl  
M. J. Stahl  
Lt. Colonel, AF Res.  
Operations Section

S-901

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January 6, 1953

Michigan State Headquarters  
Selective Service System  
Post Office Box 626  
Lansing 3, Michigan  
Attention: Colonel M. J. Stahl

Re: Gonzales, Joe V.  
SS No. 20-95-31-424

Gentlemen:

Transmitted herewith is the Cover Sheet for the above-named registrant as you requested.

For the Local Board  
[Signature]  
Jean G. Seppi, Clerk

JGS

---

13 January 1953

SS No. 20-95-31-424

Mr. Joe V. Gonzales  
476 West Grand Blvd.  
Detroit 16, Michigan

Dear Mr. Gonzales:

This will acknowledge receipt of your letter of 21 Decem-

*Government's Ex. No. 1—Selective Service File*

ber 1952 in which you have expressed the opinion that you have not been properly classified and have requested a review of your case.

Under the Universal Military Training and Service Act, it is the responsibility of the local board to classify registrants under its jurisdiction, subject to appeal procedures.

Upon receipt of your letter this headquarters has examined the contents of your Selective Service file. This examination reveals that you have been granted all of your procedural rights under the law, including the right to a personal appearance before your local board and the right of appeal.

On 11 December 1952 the State Appeal Board determined your classification to be I-A as available for military service by unanimous vote of 3 to nothing. With no dissenting vote in the decision of the appeal board, the law does not provide for further right of appeal on the part of the registrant.

We regret that your letter and the examination of your Selective Service file does not reveal sufficient basis for this headquarters to intercede in the normal processing of your case.

For the State Director,  
Robert W. Lundquist  
Captain, Artillery  
Operations Section

RWL: ml

cc: Local Board with cover sheet  
Col Stahl

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73a

**GOVERNMENT'S EXHIBIT NO. 6**

I am requesting a copy of the hearing before the local board, this 2 day of Feb. 1953.

Joe V. Gonzales

And have received a copy thereof, on this same day of 2 of Feb. 1953

Joe V. Gonzales

FEB 2 1953

[Local Board Stamp]

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**SELECTIVE SERVICE SYSTEM  
ORDER TO REPORT FOR INDUCTION**

(Local Board Stamp)

*FEB 3 1953*  
(Date of mailing)

The President of the United States,

To (First name) *Joe* (Middle name) *V* (Last name) *Gonzales* (Selective Service Number) *20 95 31 424* (Street and number) *476 West Grand Blvd.* (City) *Detroit 16* (State) *Mich*

Greeting:

Having submitted yourself to a Local Board composed of your neighbors for the purpose of determining your availability for service in the Armed Forces of the United States, you are hereby ordered to report to the Local Board named above at (Place of reporting) at (Hour of reporting) m., on the (Day) of (Month) *FEB 19 1953* for forwarding to an induction station.

[Signature]

(Member or clerk of Local Board)

74a

*Government's Ex. No. 1—Selective Service File*

\* \* \*

SSS Form No. 252

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MICHIGAN STATE HEADQUARTERS  
SELECTIVE SERVICE SYSTEM  
Arnold Building, 1120 May Street  
Lansing 3, Mich.

24 February 1953

FEB 25 1953  
[Local Board Stamp]

Michigan Local Board No. 95  
Wayne County  
1050 West Fort Street  
Detroit, Michigan

Re: Gonzales, Joe V.  
SS No. 20-95-31-424

Gentlemen:

It is requested that the Cover Sheet for the above named registrant be forwarded to the attention of the undersigned for review.

Sincerely yours,  
Arthur A. Holmes  
Colonel, Infantry  
State Director

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75a

*Letter of Local Board to State Director*

February 25, 1953

State Director  
Michigan State Headquarters  
Selective Service System  
Post Office Box 626  
Lansing 3, Michigan

Re: Gonzales, Joe V.  
SS No. 20-95-31-424

Dear Sir:

Transmitted herewith is the Cover Sheet for the above-named registrant for review, as requested.

For the Local Board  
[Signature]  
Jean G. Seppi, Clerk

JGS  
enclosure

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MICHIGAN STATE HEADQUARTERS  
SELECTIVE SERVICE SYSTEM  
735 E. Hazel Street  
Lansing 12, Michigan

9 April 1953

APR 14 1953  
[Local Board Stamp]  
Michigan Local Board No. 95  
Wayne County  
1050 West Fort St.  
Detroit, Michigan

Re: Gonzales, Joe V.  
SS No. 20-95-31-424



*Government's Ex. No. 1—Selective Service File*

Gentlemen:

Enclosed is the Cover Sheet for the above-named registrant.

For the State Director,  
Robert W. Lundquist  
Robert W. Lundquist  
Captain, Artillery  
Operations Section

Enclosure: Cover Sheet

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SELECTIVE SERVICE SYSTEM  
DELINQUENT REGISTRANT REPORT

(Local Board Stamp)

(Date) *April 15, 1953*

TO: Hon. *Joseph C. Murphy* Chief Assistant, United State Attorney. (Address) *813 Federal Building, Detroit, Michigan*

1. Identification of Delinquent:

Full name of delinquent: (Last) *Gonzales* (First) *Joe* (Middle) *Valdez* (Alias, if any) *Boyo or Boy*

\* \* \*

2. Offenses:

This delinquent failed to report for induction into the Armed Forces pursuant to . . .

The order indicated was mailed on (Date of mailing) *February 3, 1953* to this delinquent at (Address) *476 West Grand Blvd., Detroit, Michigan* to report on (Date) *February 19, 1953*.

In addition to failing to report for induction into the Armed Forces this delinquent has also failed to perform the following duties at the times indicated:

Duties

*Reported for induction but refused to submit to induction*  
SSS Form No. 301

77a

*Notice of Refusal to Submit to Induction*

\* \* \*

[Signature]

(Member or clerk of local board)

\* \* \*

WFM/mlc  
19 February 1953

327.36

SUBJECT: Induction Refusal

To: United States District Attorney  
Federal Building  
Detroit 26, Michigan

1. Notification is hereby tendered that on this date the following named individual refused to submit to induction at this station:

- a. Name - Joe Valdez Gonzales
- b. Address - 476 West Grand Boulevard, Detroit Michigan
- c. Selective Service Number - 20 95 31 424
- d. Selective Service Board - Michigan Local Board No. 95, Wayne County, 1050 West Fort Street, Detroit, Michigan

2. The registrant appeared at this station as scheduled and was processed through the normal routine of induction. He was asked to step forward for induction and refused. He was then informed that his refusal constituted a felony under the provisions of the Selective Service Regulations and that conviction of such an offense under civil proceedings would subject him to be punished by imprisonment for not more than five years or a fine of not more than \$10,000 or both. After being informed of these provisions, he was again asked to step forward for induction and still refused. He stated his reason for refusal was his

*Government's Ex. No. 1—Selective Service File*

religious training. He voluntarily signed a statement indicating his refusal to be inducted into the Armed Forces of the United States.

3. Names and addresses of witnesses are as follows

Capt. Walter F. Mason

Sgt. George K. Vass

6301 W. Jefferson Ave., Detroit 17, Michigan

For the Officer in Charge:

[Signature]

Walter F. Mason

Captain, Armor

Asst Adjutant

1 Incl.: Statement

CC: State Director, Selective Service Hq. Box 626, Lansing, Michigan Local Board #95, Wayne County, 1050 W. Fort St., Detroit, Michigan

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### **MOTION FOR JUDGMENT OF ACQUITTAL**

**MAY IT PLEASE THE COURT:**

Now comes the defendant and moves the court for a judgment of acquittal for each and every one of the following reasons:

1. There is no evidence to show that the defendant is guilty as charged in the indictment.

2. The Government has wholly failed to prove a violation of the Act and Regulations by the defendant as charged in the indictment.

3. The undisputed evidence shows that the defendant is not guilty as charged.

4. The denial of the conscientious objector status by the local board and the board of appeal and the recommendation by the hearing officer of the Department of Justice and by

*Motion for Judgment of Acquittal*

the Department of Justice and board of appeal were without basis in fact, arbitrary, capricious and contrary to law.

5. The recommendation of the Department of Justice relied upon by the board of appeal is arbitrary, capricious and illegal because it refers to artificial, fictitious and unlawful standards not authorized by the Act and Regulations and advises the appeal board to classify according to irrelevant and immaterial lines in determining that the defendant was not a conscientious objector when a pursuit of the Act and Regulations was the only thing for the hearing officer and the appeal board to follow.

6. The undisputed evidence at the trial and the draft board records received into evidence show that there was a violation of procedural rights of the defendant before the local board on personal appearance because, at the time he appeared before the board, they had their minds made up not to reconsider his case and all of his claims *de novo* and they merely heard and listened to him with the intention of giving him the same classification given to him before the personal appearance so that he could appeal; accordingly, there was no *de novo* classification by the local board upon personal appearance as though he had never been classified which violated Section 1624.2 of the Regulations.

7. The undisputed evidence shows that upon the trial the draft board members were prejudiced and discriminated against the defendant because of his membership in Jehovah's Witnesses, a religious organization, contrary to Section 1622.1 (d) of the Regulations.

8. The local board deprived the defendant of procedural rights to a full and fair hearing before the board of appeal by failing to make an adequate and full written memorandum of the new additional oral evidence given by the defendant upon the occasion of his personal appearance, which new and additional oral evidence does not otherwise appear in the written papers sent to the board of appeal.

*Motion for Judgment of Acquittal*

9. The undisputed evidence shows that the draft boards violated the Regulations by denying the defendant his claim for classification as a conscientious objector because he had pressed before the Selective Service System his claim for exemption as a minister of religion.

10. The use of the secret investigative report of the F.B.I. without notifying or confronting the defendant with the substance of, or the parts of it, which were considered by or relied upon by the hearing officer upon the occasion of the hearing before the Department of Justice hearing officer and also the failure to include all of the evidence in the F.B.I. report relied upon by the hearing officer and all that appeared in the F.B.I. report and that was considered by the hearing officer, and also the failure to put all of such evidence in the F.B.I. report in the draft board file for the use of the board of appeal and the court, constitute a deprivation of defendant's rights to procedural due process of law in violation of the Fifth Amendment to the United States Constitution and also is a clear and unequivocal violation of the Selective Service Act of 1948 (or Universal Military Training and Service Act) and the Regulations promulgated thereunder. (Section 1622.1 (b))

11. The use of the report of the Hearing Officer of the Department of Justice, and reliance upon it by the Assistant to the Attorney General without notifying or confronting the defendant with the substance of the report, and also the failure to include the entire report of the hearing officer relied upon by the Assistant to the Attorney General in the draft board file for the use of the appeal board and the Court constitutes a deprivation of defendant's rights to procedural due process of law in violation of the Fifth Amendment to the United States Constitution, and also is a clear and unequivocal violation of the Selective Service Act of 1948 or Universal Military Training and Service Act, and the Regulations promulgated thereunder.

*Motion for Judgment of Acquittal*

WHEREFORE, the defendant prays that a judgment of acquittal be rendered and entered.

Respectfully submitted,  
Harold E. Leithauser  
Attorney for Defendant

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**ORDER DENYING MOTION FOR JUDGMENT OF  
ACQUITTAL AND FINDING DEFENDANT GUILTY**

Defendant was tried by the court without a jury on a charge of violating Sec. 462(b), Title 50 App., U. S. C., by failing to submit to induction into the armed forces. Throughout these proceedings he was represented by counsel. A waiver of trial by jury is on file.

Information in defendant's Selective Service file discloses that he registered with his local draft Board on January 4, 1950. In his Classification Questionnaire he indicated that he was a conscientious objector and also claimed exemption as a minister of Jehovah's Witnesses. Form SSS 150, the Special Form for Conscientious Objectors was furnished to him by the Board and was filled out and filed by defendant. The Local Board classified him III-A from which classification he appealed but the same class was assigned to him by the Appeal Board. Nine months later he was reclassified I-A, whereupon he requested and was granted a personal appearance before the Local Board, but this Board again classified him I-A and he again appealed. The Appeal Board reviewed his file and determined that he should not be classified in either a class lower than I-O (the class in which are placed conscientious objectors opposed to both combatant and non-combatant training and service) or in Class I-O and, as required by Regulations governing claims of conscientious objectors, the Selective

*Order Denying Motion for Acquittal*

Service file of this registrant was referred to the Department of Justice for an investigation and hearing before a hearing officer on the character and good faith of his conscientious objector claim and for an advisory recommendation. The Department of Justice, after the investigation and hearing, recommended to the Appeal Board that defendant's claims for exemption from both combatant and non-combatant service be not sustained. The Appeal Board, by a vote of 3-0, gave defendant a classification of I-A. He then requested the State Director of the Selective Service to withhold notice of induction until his file could be reviewed by that office but was informed that all procedural rights permitted under the law were granted to him and no further right of appeal existed, also that facts contained in the file afforded no basis for that headquarters to intercede in the normal processing of the case.

After a physical examination defendant was found acceptable for military service and a notice to appear for induction on February 19, 1953, was mailed to him. He appeared at the induction center but refused to submit to induction on the ground of religious training. This prosecution followed.

At the conclusion of the Government's case defendant moved for a judgment of acquittal. Decision on the motion was reserved.

One of the grounds for the motion is that the Government failed to prove a violation of the Selective Service Act and Regulations by defendant, as charged in the indictment. The duty to report for induction in accordance with the draft board's order includes the duty to submit to induction, and breach of such duty is a crime as defined by Sec. 462, Title 50 App., U. S. C., making criminal a willful failure to perform any duty required of a registrant. See *Estep v. U. S.*, 327 U. S. 114. In a prosecution for violation of an induction order proof by the Government that a defendant



*Order Denying Motion for Acquittal*

had been processed and ordered to report for induction, that he appeared for induction but refused to submit to induction, establishes the Government's case, putting the defendant to his defense. This showing was made by the Government and, unless the defendant established a valid defense, he is guilty of the offense with which he is charged.

The duty to classify registrants under the Selective Service Act and to grant or deny exemptions rests solely upon the draft boards, local and appellate. Decisions of local boards are made final under the law. This means that Congress chose not to give administrative action under the Act the customary scope of judicial review which obtains under statutes and that the court does not weigh the evidence to determine whether the classification made by the local boards was justified. Their decisions are final, if made in conformity with the regulations, even though they may be erroneous. The question of jurisdiction of the local boards is reached only if there is no basis in fact for the classification which it gave registrant. *Estep v. U. S.*, supra. Defendant charges, in his motion, that the classification he received was arbitrary and capricious and without basis in fact and that, in so classifying him, the local and appeal boards proceeded in violation of Regulations promulgated under the Selective Service Act.

Defendant was baptized as a Jehovah's Witness one and one-half months after his registration with the local draft board. Prior to his affiliation with this sect he was a Catholic, in which religion he was reared by his parents, together with his five sisters and a brother. His entire family still professes that faith. In September, 1948, defendant married a woman who had been a Jehovah's Witnesses for many years but he seemed to evince no interest in the sect after his marriage until just prior to or shortly after his registration. In SSS Form 150 he claims that he joined Jehovah's Witnesses in December, 1949. He was baptized in that



*Order Denying Motion for Acquittal*

religion on February 19, 1950, a month and a half after his registration, and claims the status of a minister from that date. In his Special Conscientious Objector Form he gave the religion of both his parents as Catholic; he described his activity with the sect since December, 1949, and his recognition as a pioneer in October, 1950, as the actions and behavior in his life which in his opinion most conspicuously demonstrate the consistency and depth of his religious convictions and, other than that, he answers that he has given no public expression, written or oral, to the views expressed in this special form as the basis of his claim for exemption. On the occasion of his personal appearance before the Local Board he testified that no ordination certificate was issued to him but that he had a Pioneer Assignment card and had some prescribed duties as a pioneer, being the advertising servant of the downtown unit, taking care of all the advertising duties; that they have some 2000 magazines which he takes care of each month, to see that they are distributed and if any more are needed; that his group meets every Thursday and sometimes "talks are handed to him" that he should make and at other times he conducts Bible studies with different people in various homes of members. From the time he first made claim for exemption he was employed on a full-time basis with the Great Lakes Steel Corporation which, according to his own admissions, manufactures some articles of war. He also testified before the Local Board that Jehovah's Witnesses had no creed or official statement directly relating to war but that this is a matter for each one to determine according to his own conscience; that there are some Jehovah's Witnesses who have joined the army and navy but did so according to the dictates of their own conscience.

In support of defendant's claims as a minister of Jehovah's Witnesses he submitted to the Local Board an affidavit, dated April 1, 1951, signed by a number of Jehovah's

*Order Denying Motion for Acquittal*

Witnesses, testifying to the fact that they observed him performing the duties of a minister for the past one and one-half years and that they recognized him as a minister, but, even if his own statement that he became a Jehovah's Witness in December, 1949, be accepted as true, he was not a Jehovah's Witness eighteen months prior to the date on which the affidavit was signed, April 1, 1951.

Under the facts disclosed by defendant's Selective Service file it is the considered opinion of this court that the classification of I-A assigned by the local and appellate boards to the defendant was not without basis in fact. Such decisions relative to his classification are, therefore, final unless such Boards, in reaching their decisions, proceeded in violation of the Act or Regulations.

A violation of the Regulations in several respects is charged. Defendant contends that on the occasion of his personal appearance before the Local Board its members made up their minds not to reconsider defendant's claims de novo but only heard him with the intention of giving him the same classification so that he could appeal; that he was not given a de novo classification, as required by Regulations, that the Board members were prejudiced and discriminated against him because of his membership in Jehovah's Witnesses; that the draft Board denied him his claim for classification as a conscientious objector because he had pressed his claim for exemption as a minister of religion before the Selective Service System. There is nothing in the evidence to substantiate these charges.

Another ground for acquittal contained in the motion is that the Local Board deprived defendant of procedural rights to a full and fair hearing before the Appeal Board by failing to make an adequate and full written memorandum of the new additional oral evidence given by defendant upon the occasion of his personal appearance, which new and additional oral evidence does not otherwise appear in

*Order Denying Motion for Acquittal*

the written papers sent to the Appeal Board. The facts reveal that on the occasion of the personal appearance before the Local Board notes were taken in longhand and also more complete notes for transcription later. At the conclusion of the hearing defendant requested a copy of the notes "so if the Board asked a certain question I would know what I answered." Registrant was informed that the notes were for the Selective Service file and such notes were later transcribed and placed in the file. Subsequently, defendant requested and acknowledged in writing receipt of a copy of this transcript on February 2, 1953. At no time, since that date, did he complain that such transcript was inadequate, incomplete, or incorrect, until he testified at the trial that answers which he gave were not stated therein correctly. He gave only one instance, however, testifying that when he was asked about his employment with the Great Lakes Steel Corporation and the fact that they manufactured articles of war he answered that even if he raised hogs, which were sold to the market, and the Government bought them on the market, it was beyond his control and not his business to whom the hogs were sold and it was the same thing about his income tax. The transcript gave this portion of his testimony as, "I feel I have to make my living someway even if I raised pigs, and I am still doing the same thing when I pay my income tax. I do not know where the money goes but that is not my business . . ." Defendant admitted, on cross-examination, that he never previously complained about the alleged incorrectness of the notes. Regulation 1624 requires only that any further information offered to the Local Board at the time of personal appearance before that Board shall be in writing, or, if oral, shall be *summarized* in writing and, in either event, shall be placed in the file of the registrant; the information furnished should be as concise as possible under the circumstances. This Regulation is not ambiguous and has been

*Order Denying Motion for Acquittal*

construed to require nothing more than a short written summary of the oral evidence received at the personal hearing. The transcript on file more than adequately summarizes the information submitted by defendant. See *Niznik v. U. S.* (C. A. 6th Cir.) 173 F. 2d 328; *Dickinson v. U. S.* 203 F. 2d 336.

An additional ground for the motion of acquittal is the charge that use of the secret investigative report of the F.B.I. without notifying or confronting defendant with the substance thereof, the failure to include all the evidence contained in such report, and use of the hearing officer's report and reliance thereon by the Assistant to the Attorney General, without notifying or confronting defendant with the substance thereof, as well as failure to include the entire report of the hearing officer and the F.B.I. in the draft board file of defendant, all constitute a deprivation of defendant's rights to procedural due process of law, in violation of the Fifth Amendment of the U. S. Constitution and the Selective Service Act and Regulations. Counsel for defendant urges that defendant was deprived of his constitutional rights of confrontation by being refused the right to be made cognizant of those persons who may have testified against him. In *U. S. v. Nugent*, 346 U. S. 1, it was held that a registrant is not permitted, under the Act and Regulations, to see the F.B.I. investigator's report nor to be informed of the names of persons interviewed by the investigator; that the requirement of Sec. 6(j) of the Act—that the Department of Justice afford registrant a hearing—does not require it to entertain an all-out collateral attack on the testimony obtained in the prehearing investigation; and, that the Act, as thus construed and applied, does not violate the Fifth Amendment. See also *Bejelis et al. v. U. S.* (C. A. 6th Cir.) decided July 20, 1953; *U. S. v. Del-Santo*, 205 F. 2d 429. Regulation 1626.25, in effect at the time of hearing before the hearing officer, provides merely

*Order Denying Motion for Acquittal*

that the Appeal Board shall place in a registrant's file the letter containing the recommendation of the Department of Justice. The Appeal Board complied with this requirement. These grounds in the motion are not sustained.

In its advisory recommendation the Department of Justice incorporates the conclusions reached by the hearing officer that defendant's affiliation with Jehovah's Witnesses has been too recent and too closely related to his draft status to warrant the acceptance of his conscientious objector position as genuine and the fact that he became a member one month after his registration in January, 1950, despite the fact that his wife had been a member for many years, lends weight to this conclusion. This recommendation gives rise to another ground in defendant's motion for acquittal as referring to artificial, fictitious and unlawful standards not authorized by the Act and Regulations and advises the Appeal Board to classify according to irrelevant and immaterial lines in determining that defendant was not a conscientious objector. The only purpose of Selective Service file referrals to the Department of Justice, in cases of conscientious objectors, as clearly set forth in the Regulations, is for an investigation and a hearing on the character and good faith of the conscientious objections of registrants. This is a special procedure, applicable only to claims of conscientious objectors. In such cases the boards are confronted with the difficult and complex decision in which the sincerity of another's religious convictions becomes the ultimate factual issue. Counsel for defendant cites a case in which another court held that all Jehovah's Witnesses are conscientious objectors. Defendant himself advances a contradictory view, since he stated on more than one occasion that this sect had no creed or official statement directly relating to war but left that matter to each one's conscience. The issue is not whether the registrant was a Jehovah's Witness at the time of his classification, nor

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whether he applied himself to his religious duties in that sect. It stems from defendant's claim that by reason of his religious training and convictions he is conscientiously opposed to participation in war in any form. This claim is initially set forth in SSS Form 150 and therein a registrant gives detailed information to aid in determining the sincerity of such claim. Regulations 1622.14 provides that in Class I-O, the classification which defendant seeks, in the alternative to his claim as a minister, shall be placed every registrant *who has been found* (not who claims), by reason of religious training and belief, to be conscientiously opposed to both combatant and non-combatant training and service in the armed forces. As was stated in the *U. S. v. Nugent* decision, *supra*, a registrant claiming this classification must convince the draft board, composed of representatives of his own community, of the *depth* and *sincerity* of his convictions; he must fill out forms, calculated to put him to the test; he must supply any additional detailed information which may be necessary for a *searching investigation* of such claim. Every factor which may have bearing on the claim may and should be considered, both by the boards and the hearing officer of the Department of Justice; from the mass of information on hand facts inconsistent with the claim made should be ferreted out and examined to determine whether the claim is a mere assertion utilized in an effort to circumvent Selective Service legislation or whether it is genuine and of the character which Congress had in mind when it gave express statutory recognition to the rights of conscience and adopted new and special procedures, under the present Selective Service Act, to secure those rights. See *U. S. v. Nugent*, *supra*. The hearing officer is not limited to mere inquiry as to a registrant's reputation for truth and veracity and, if he be found truthful, it is not mandatory that he accept as conclusive the registrant's claim that he is a conscientious objector if other data in the



*Order Denying Motion for Acquittal*

file casts doubt on the good faith in which the claim is made, or the purpose for which it was advanced. It is true, as claimed by counsel for defendant, that the registrant's actual status at the time of classification and not as of the time of registration controls, but it does not follow that information submitted at the time of registration may not be considered, particularly in cases of conscientious objectors, when earlier data may supply clues as to the genuineness of the status claimed at the time of classification. The factors which the hearing officer considered were not irrelevant, viewed in this light. Furthermore, the advisory recommendation and information therein are not binding upon the Appeal Board; it could consider such recommendation but was not bound by it in any manner, and it was so advised by the Regulations; it had the complete Selective Service file before it at all times when this registrant's case was before it and had access to facts therein contained and had a right to make its own appraisal of those facts. This court finds that this phase of the proceedings under attack by defendant has not been conducted in violation of the Regulations.

In addition to grounds stated in the motion for acquittal counsel for defendant attacked the validity of the proceedings for other reasons, one of which is that at the personal hearing before the Local Board defendant's witness was not permitted to testify on defendant's behalf. Defendant appeared at this hearing with another Jehovah's Witness and was informed that the witness would be permitted to testify after defendant was examined. When such examination was completed the Board member asked defendant what he wished to present through his witness and defendant stated that the last time he was at the office of the Board he overlooked mentioning that this witness is the servant who is supposed to sign his Pioneer Assignment card, that he "showed the card to the witness and the witness OK'd it

*Order Denying Motion for Acquittal*

and took it to sign;" also, that the witness could verify statements made by defendant to the board. He was informed that it would not be necessary to verify this information as defendant was sworn and gave his statements under oath. Regulations 1624.1(b) provides that no person other than a registrant shall have the right to appear in person before the Local Board, but the Local Board may, in its discretion, permit any person to appear before it with or on behalf of a registrant. Under the circumstances above related the Local Board did not violate this Regulation nor did it abuse its discretion in hearing testimony of this witness to verify statements made by defendant himself.

Charged as a deprivation of defendant's rights under the Statute and Regulations as Constitutional rights of due process of law is the fact that, although defendant claimed exemption before the Department of Justice Hearing Officer both as a conscientious objector and as a minister, there is no indication whatsoever that said Officer even entertained defendant's claim as a minister, in that the Appeal Board was therefore deprived of the benefit of the Hearing Officer's investigation relative to the claim as a minister. Regulation 1626.25 which directs referral of Selective Service files to the Department of Justice for investigation and a hearing before a hearing officer on the character and good faith of conscientious objections of registrants obviously has application only to cases of conscientious objectors and not those which involve other claims for exemption. A claim for exemption as a minister of the Gospel is beyond the scope of this Regulation.

Finally, counsel also contends that the statement in the hearing officer's report, incorporated in the advisory recommendation of the Department of Justice, distorts facts because it concludes that defendant became ~~a~~ member of Jehovah's Witnesses one month after his registration. Defendant claims he became a member in December, 1949, or



*Order Denying Motion for Acquittal*

prior to his registration on January 4, 1950. He was baptized in February, 1950. The hearing officer had a right to believe or disbelieve defendant's claims and reach his own conclusion, as a reasonable man, what the facts were in the light of all surrounding circumstances. If he concluded that defendant actually became a member of the sect the month during which he was baptized, which was the month following registration with the draft board, such conclusion cannot be termed a distortion of facts as defendant claims they exist. This charge is not sustained.

An examination of the entire record of proceedings in this case before the Selective Service boards and the Department of Justice reveals that defendant has been accorded every opportunity sought by him to prove his claims for exemption as a minister of the Gospel and as a conscientious objector, and that all such proceedings were taken in full compliance with the Selective Service Act and Regulations promulgated thereunder. The order to appear for induction was a valid order, disobedience of which constitutes a violation by defendant of the Selective Service Act, as charged in the indictment.

Defendant's motion for judgment of acquittal is hereby denied.

This court finds defendant, Joe Valdez Gonzales, guilty of the offense charged in the indictment.

[Signature]

Arthur A. Koscinski

United States District Judge

Dated: September 29, 1953.

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**JUDGMENT AND COMMITMENT**

On this 26th day of October, 1953 came the attorney for the Government and the defendant appeared in person and by counsel.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a finding of guilty of the offense of failure to submit to induction in violation of Sec. 462(b), USC 50 App. as charged in the indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of three years; and to pay to the Clerk of the Court for the use and benefit of the United States of America a fine in the amount of Five Hundred (\$500.00) Dollars.

IT IS ADJUDGED that the appearance bond be canceled.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Arthur A. Kosciński,  
United States District Judge.

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### NOTICE OF APPEAL

Name and Address of Defendant; Appellant: Joe Valdez Gonzales, 301 Fourth Street, East Rochester, Michigan:

Names and Addresses of Appellant's Attorneys: Hayden C. Covington, 124 Columbia Heights, Brooklyn 2, New York; Harold E. Leithauser, 2504 Guardian Building, Detroit 26, Michigan.

Offense: Violation of the Selective Service Act of 1948 by refusing to be inducted into the land or Naval Forces.

Concise Statement of Judgment: Defendant was remanded to the custody of the Attorney General for a period of three (3) years and fined One Thousand (\$1,000.00) Dollars.

The bond of the appellant has been canceled pending this Appeal.

I, one of the attorneys for the above-named appellant, hereby appeal to the United States Court of Appeals for the Sixth Circuit, from the above-stated judgment.

[Signature]

Harold E. Leithauser

Dated: October 26, 1953.

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IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH  
CIRCUIT

No. 12,094

JOE VALDEZ GONZALES, Defendant-Appellant,

vs.

UNITED STATES OF AMERICA, Plaintiff-Appellee

APPENDIX TO APPELLEE'S BRIEF—Filed February 24, 1954

MAHN, CLARA, was thereupon called as a witness on behalf of the defense and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Leithauser:

Q. What is your full name, madam?

A. Clara Mahn.

Q. Where do you live, Mrs. Mahn?

A. 1136 Adams Street, Monroe, Michigan.

Q. What is your occupation?

A. I am a minister also.

Q. Are you acquainted with the defendant, Joe Valdez Gonzales?

A. Yes, I am.

Q. For how long a period have you known him?

A. Well, it's at least two years.

Q. Were you present with him at the time that he appeared before Mr. John C. Ray, the Hearing Officer for the Department of Justice?

A. Yes, I was.

Q. Were you present throughout the entire hearing?

A. Yes, I was.

Q. Will you tell us what recollection you have of that hearing as to what was said by one party and what was said by another?

A. Not too much. It is very much the same as it has been discussed before here, and I do remember this much, that Mr. Ray, when Joe went on to explain or tried to

explain certain things relative to his work and the different meetings that he went to, and so on, and phases of the work that he engaged in, Mr. Ray said that he needn't go into that at all because he was very familiar with all of our work. In fact, he went on to tell us about the Theocratic Ministry School, the street work, and all of that, and he said "You see, I've had so many of you folks here before that I'm very well acquainted with what you are doing. All I want to do is determine your sincerity. I don't care what religion you are, just so you would be sincere in your religion. That is what I am trying to determine."

Q. So he did not permit the defendant to testify?

The Court: Don't ask the witness leading questions and conclusions.

By Mr. Leithauser:

Q. Did you hear Mr. Ray say anything that you presently recall while Joe was attempting to testify? Can you recall any exact statements he made?

A. No, only in this one connection, as I stated, that I remember.

Q. In connection with what you have already testified?

A. Yes.

Mr. Leithauser: No further questions, your Honor.

Mr. Greenburg: No questions.

The Court: You may step down.

(Witness excused.)

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IN UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT  
CAUSE ARGUED AND SUBMITTED—April 5, 1954

Before McAllister and Miller, Circuit Judges, and Ford,  
District Judge

This cause is argued by Hayden C. Covington for appellant and by Ronald L. Greenberg for appellee and is submitted to the Court.

## IN UNITED STATES COURT OF APPEALS

JUDGMENT—Filed April 15, 1954

Appeal from the District Court of the United States for  
the Eastern District of Michigan

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

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## IN UNITED STATES COURT OF APPEALS

OPINION—Filed April 15, 1954

Before McAllister and Miller, Circuit Judges, and Ford,  
District Judge

PER CURIAM:

This ably presented and well argued appeal is from a conviction on charges of violating the Universal Military Training and Service Act and revolves about the determination of the appeal board. The district court held that the denial by the board of the conscientious objector and ministerial status claimed by appellant was not without a basis in fact and was not arbitrary and capricious, contrary to appellant's contentions on the trial, and on appeal. Appellant further claims that the recommendation of the Attorney General to the appeal board that appellant be denied the conscientious objector status was arbitrary and illegal and invalidated the final classification; and that the Department of Justice deprived appellant of his procedural rights to due process of law by not providing him with a copy of the report of the hearing officer and of the proposed recommendation by the Department of Justice to the appeal board before the recommendation was served upon the board; and that appellant was further denied due process of law by not being given an opportunity to answer the

adverse report and recommendation before his classification.

A review of the documentary evidence appearing in appellant's file and which was before the draft board and the appeal board for consideration, reveals, in the opinion of this court, that the appeal board did have a basis in fact for its determination, as was set forth in considerable detail in the order of the district court denying appellant's motion for acquittal, and finding appellant guilty of violation of the Act. As to the recommendation of the hearing officer to the appeal board, it clearly appears that such officer was principally occupied in ascertaining appellant's sincerity in making his claims to the conscientious objector and ministerial status. His finding that appellant appeared to be a sincere Jehovah's Witness, but that his affiliation with that religious body one month after his registration for service had been too recent to warrant acceptance of his claimed status, is not inconsistent, since members of the sect are not necessarily, by virtue of their membership, conscientious objectors, but each determines, according to his own conscience and according to his personal interpretation of the Bible, whether he may conscientiously engage in military service. As appellant testified before the draft board, some Jehovah's Witnesses have joined the Army and Navy "and that is by their own consciences." and such conduct conforms with appellant's interpretation of the Bible. As to the conclusion in the report that "registrant appeared to be a sincere Jehovah's Witness and as such is conscientiously opposed to war," this was followed by the statement that appellant disclaimed being a pacifist "and under certain circumstances, if attacked, would defend himself and members of his family to the point of taking life." The circumstances under which appellant would take life are "biblical circumstances," such as a command from God, of which appellant would be the sole judge, "by using the Word of God." A person, therefore, may be a sincere member of Jehovah's Witnesses and yet not be a conscientious objector. The hearing officer testified on the trial that his finding that the proximity of the time that appellant became a Jehovah's Witness to the time of his registration was the principal element why he concluded that appellant should not be



classified as a conscientious objector, but that the other factors also formed the basis for his opinion. The fact that one claims he is conscientiously opposed to military service shortly before being subject to the draft law and military service has no bearing on whether he is entitled to exemption as a conscientious objector. It has a bearing only upon the question whether he is sincere in claiming that he is conscientiously opposed to participation in military service. The recommendation of the Attorney General recited the hearing officer's conclusion and set forth the finding that appellant's claim was not sustained "after consideration of the entire file and record." The report of the hearing officer and the recommendation of the Attorney General are in no sense binding, but are merely advisory.

With respect to appellant's claim that he was denied due process by being deprived of a copy of the report of the hearing officer and of the proposed recommendation by the Department of Justice to the appeal board before such recommendation was submitted to the board, and the further claim that the appeal board denied appellant due process of law by not giving him an opportunity to answer the adverse report and recommendation prior to final classification have heretofore been decided **contrary to appellant's contentions**. *United States v. Nugent*, 346 U. S. 1, *Bejelis v. United States*, 206 F. 2d 354 (C. A. 6), *Imboden v. United States*, 194 F. 2d 508 (C. A. 6).

The judgment of the district court is affirmed for the reasons set forth by Judge Koscinski in his order denying judgment of acquittal and finding appellant guilty of the offense as charged in the indictment.

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Clerk's Certificate to foregoing transcript omitted in printing.



100a

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1954

No. 69

[Title omitted]

ORDER ALLOWING CERTIORARI--Filed October 14, 1954

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(8435)

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MAY 10 1954

HAROLD B. WILLEY, Clerk

# Supreme Court of the United States

OCTOBER TERM, 1954

No. ~~100~~ 69

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JOE VALDEZ GONZALES,

*Petitioner*

v.

UNITED STATES OF AMERICA,

*Respondent*

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**Petition for Writ of Certiorari  
to the United States Court of Appeals  
for the Sixth Circuit**

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HAYDEN C. COVINGTON

124 Columbia Heights  
Brooklyn 1, New York

*Counsel for Petitioner*

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**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1953

**No.**

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**JOE VALDEZ GONZALES,**

*Petitioner*

*v.*

**UNITED STATES OF AMERICA,**

*Respondent*

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**Petition for Writ of Certiorari  
to the United States Court of Appeals  
for the Sixth Circuit**

---

**TO THE SUPREME COURT OF THE UNITED STATES:**

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, affirming the judgment of the United States District Court for the Eastern District of Michigan convicting the petitioner of a violation of the Universal Military Training and Service Act and sentencing him to the custody of the Attorney General.

## OPINION BELOW

The opinion of the Court of Appeals is not yet reported. It appears in the record. [98a]<sup>1</sup> A memorandum opinion of the district court also appears in the record. [81a-92a]

## JURISDICTION

The judgment of the Court of Appeals was entered on April 15, 1954. [97a] This petition for writ of certiorari is filed within 30 days of the date of such judgment. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).—See also Rules 37(b)(2) and 45(a), Federal Rules of Criminal Procedure.

## QUESTIONS PRESENTED

### I.

Section 6(j) of the Universal Military Training and Service Act states that a registrant who, because of religious training and belief, is opposed to combatant and noncombatant training and service in the armed forces, shall be exempted from such training and service and be classified as a conscientious objector. The act does not make belief in self-defense or willingness to defend oneself a basis for a denial of the conscientious objector status. The Court of Appeals, as a basis for affirmance, found that petitioner's willingness to use force in self-defense was a basis in fact for the denial of the conscientious objector status.

A question presented, therefore, is whether petitioner's willingness to defend himself and his Christian brothers by the use of force in event of attack is basis in fact for a denial by the Selective Service appeal board of the conscientious objector classification claimed by petitioner.

<sup>1</sup> Numbers appearing herein within brackets refer to pages of the printed record in this case.



## II.

Section 6(j) of the act and Section 1626.25 of the Selective Service Regulations provide for the reference of the conscientious objector claim to the Department of Justice for appropriate inquiry and hearing. This is followed by a recommendation by the department to the appeal board on the conscientious objector claim. Petitioner had a hearing, after inquiry, that was followed by a report of the hearing officer to the Department of Justice and a recommendation by the Assistant Attorney General to the appeal board. The department found petitioner to be a sincere and bona fide member of Jehovah's Witnesses, but it recommended against the conscientious objector status. The reason was because of the shortness of the time petitioner had been one of Jehovah's Witnesses. It said that failed to establish that his conscientious objections were deep-seated or old enough to entitle him to the exemption. The appeal board followed the recommendation. The Court of Appeals held that petitioner was too late in becoming a conscientious objector and, therefore, this was proper basis in fact for a denial of the conscientious objector classification.

A question presented, therefore, is whether a sincere and bona fide member of a religious group having religious objections to performance of military service may be denied his conscientious objector status under the act and the regulations for the reason that he is a recent convert and his conscientious objections are not old enough because they were acquired shortly before his registration under the draft law.

## III.

Section 6(j) of the act provides for the classification of registrants as conscientious objectors who, because of religious training and belief, are conscientiously opposed to direct participation in training and service in the armed forces. The draft board file of petitioner showed that while he was conscientiously opposed to direct participation in

the armed forces he was willing to work and did work in the crating department of a steel mill in Detroit engaged in defense work.

While the Department of Justice did not place any weight on his willingness to do this work in the defense plant, the local board and the trial judge did consider this as a basis for the denial of the conscientious objector status. The Court of Appeals affirmed the conviction also for the reasons stated by the trial court in its memorandum. These reasons of the trial judge included his willingness to work in a defense plant as basis in fact for the denial of the conscientious objector claim.

A question presented, therefore, is whether the act and the regulations permit the draft boards or the courts to deny the conscientious objector status because the objector to direct participation in the armed forces is willing to work in a defense plant that might be held to be indirect participation in the war effort.

#### IV.

The undisputed evidence showed that petitioner had conscientious objections to participation in both combatant and noncombatant military service. He showed that these objections were based on his sincere belief in the Supreme Being. The file established without dispute that his obligations were superior to those owed to the state or which arose from any human relation. There was no showing that these beliefs flowed from any political, philosophical or sociological views. The undisputed evidence showed that the objections were based solidly on the Word of God and the obligations that Gonzales had to the Supreme Being. The question here presented, therefore, is whether the denial of the claim for classification of petitioner as a conscientious objector was without basis in fact and, consequently, the final I-A classification was arbitrary and capricious.

## V.

The draft board file showed that Jehovah's Witnesses, of whom petitioner is one, leave it up to each individual member to say whether he will or will not enter the armed forces and directly participate in the war effort. The record shows that petitioner made his choice and exercised his conscientious objections or showed that he is opposed to direct participation in the armed forces. The Court of Appeals erroneously held that, because some others of Jehovah's Witnesses have the right to choose to go into the armed forces, such was basis in fact for holding that petitioner was not a conscientious objector.

The question presented, therefore, is whether the fact that some members of Jehovah's Witnesses may choose to enter the armed forces and have done so may be considered as a basis in fact for the denial of the conscientious objector status to petitioner, notwithstanding that he sincerely believes in the tenets of Jehovah's Witnesses against direct participation in the armed forces to such an extent that he cannot participate in the armed forces.

## VI.

Section 1(c) of the Universal Military Training and Service Act provides that the system of selection by draft boards shall be "fair and just." Section 6(j) provides for the appropriate inquiry and hearing of conscientious objector claims on appeal. Section 1626.25 of the regulations provides for a recommendation by the Department of Justice to the appeal board to give consideration to the recommendation of the Department of Justice and determine the classification of the registrant claiming classification as a conscientious objector. No opportunity to answer the recommendation is given to the registrant. The consideration of the document is ex parte and the use of it is entirely behind the back of the registrant before and when the final classification is made by the appeal board.

The question presented, therefore, is whether petitioner

was denied his rights to procedural due process of law contrary to the act and the Fifth Amendment to the Constitution, when the appeal board considered and acted upon the adverse recommendation against petitioner without first giving petitioner an opportunity to answer the recommendation.

### STATUTE AND REGULATIONS INVOLVED

Section 1(c) of the Universal Military Training and Service Act (50 U. S. C. App. (Supp. V) § 451(c)) provides:

"The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy."—June 24, 1948, ch. 625, title I, § 1, 62 Stat. 604, amended June 19, 1951, ch. 144, title I, § 1(a) 65 Stat. 75.

Section 6(j) of the act (50 U. S. C. App. (Supp. V) § 456(j), 65 Stat. 75, 83, 86) provides:

"Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose

claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu

of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors.”—50 U. S. C. App. (Supp. V) § 456(j), 65 Stat. 75, 83, 86.

Section 12(a) of the act (50 U. S. C. App. (Supp. V) § 462(a)) provides:

“ . . . Any . . . person . . . who . . . refuses . . . service in the armed forces . . . or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title . . . shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a



fine of not more than \$10,000, or by both such fine and imprisonment . . . .”

Section 1622.14 of the Selective Service Regulations (32 C. F. R. § 1622.14 (1951 Rev.)) provides:

*“Conscientious objector available for civilian work contributing to the maintenance of the national health, safety, or interest. (a) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to both combatant and noncombatant training and service in the armed forces.”*

Section 1626.25 of the Selective Service Regulations (32 C. F. R. § 1626.25 (1951 Rev.)) provides:

*“Special Provisions When Appeal Involves Claim That Registrant Is a Conscientious Objector.—(a) If an appeal involves the question whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the appeal board shall take the following action:*

*“(1) If the registrant has claimed, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and by virtue thereof to be conscientiously opposed to combatant training and service in the armed forces, but not conscientiously opposed to noncombatant training and service in the armed forces, the appeal board shall first determine whether or not such registrant is eligible for classification in a class lower than Class I-A-O. If the appeal board determines that such registrant is eligible for classification in a class lower than I-A-O, it shall classify the registrant in that class.*

If the appeal board determines that such registrant is not eligible for classification in a class lower than Class I-A-O, but is eligible for classification in Class I-A-O, it shall classify the registrant in that class.

“(2) If the appeal board determines that such registrant is not eligible for classification in either a class lower than Class I-A-O or in Class I-A-O, the appeal board shall transmit the entire file to the United States Attorney for the judicial district in which the office of the appeal board is located for the purpose of securing an advisory recommendation from the Department of Justice.

“(3) If the registrant claims that he is, by reason of religious training and belief, conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces, the appeal board shall first determine whether or not the registrant is eligible for classification in a class lower than Class I-O. If the appeal board finds that the registrant is not eligible for classification in a class lower than Class I-O, but does find that the registrant is eligible for classification in Class I-O, it shall place him in that class.

“(4) If the appeal board determines that such registrant is not entitled to classification in either a class lower than Class I-O or in Class I-O, it shall transmit the entire file to the United States Attorney for the judicial district in which the office of the appeal board is located for the purpose of securing an advisory recommendation from the Department of Justice.

“(b) No registrant's file shall be forwarded to the United States Attorney by any appeal board and any file so forwarded shall be returned, unless



in the "Minutes of Action by Local Board and Appeal Board" on the Classification Questionnaire (SSS Form No. 100) the record shows and the letter of transmittal states that the appeal board reviewed the file and determined that the registrant should not be classified in either Class I-A-O or Class I-O under the circumstances set forth in subparagraphs (2) or (4) of paragraph (a) of this section.

"(c) The Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrant. The registrant shall be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the appeal board (1) that if the registrant is inducted into the armed forces, he shall be assigned to noncombatant service, or (2) that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of induction be ordered by his local board to perform for a period of twenty-four consecutive months civilian work contributing to the maintenance of the national health, safety, or interest. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the appeal board that such objections be not sustained.

"(d) Upon receipt of the report of the Department of Justice, the appeal board shall determine the classification of the registrant, and in its determination it shall give consideration to, but it shall not be bound to follow, the recommendation of the Department of Justice. The appeal board shall place in the Cover Sheet (SSS

Form No. 191) of the registrant both the letter containing the recommendation of the Department of Justice and the report of the Hearing Officer of the Department of Justice."

Section 1626.26 of the Selective Service Regulations (32 C. F. R. § 1626.26 (1951 Rev.)) provides:

*"Decision of Appeal Board.*—(a) The appeal board shall classify the registrant, giving consideration to the various classes in the same manner in which the local board gives consideration thereto when it classifies a registrant, except that an appeal board may not place a registrant in Class IV-F because of physical or mental disability unless the registrant has been found by the local board or the armed forces to be disqualified for any military service because of physical or mental disability.

"(b) Such classification of the registrant shall be final, except where an appeal to the President is taken; provided, that this shall not be construed as prohibiting a local board from changing the classification of a registrant in a proper case under the provisions of part 1625 of this chapter."

## STATEMENT

### THE FACTS

Petitioner was born July 22, 1931, at San Antonio, Texas. [35a] He registered with Local Board No. 95, Wayne County, Michigan, at Detroit, on January 4, 1950. [34a] A classification questionnaire was mailed to him on February 28, 1951. [34a] He answered the questionnaire and returned it to the board on March 9, 1951. [35a]

He gave his name and address. [36a] In Series VI he

stated he was a minister of religion and that he regularly and customarily served as such. He stated he had been a minister of Jehovah's Witnesses since February 19, 1950. He stated he had been formally ordained on February 19, 1950. [37a]

In Series VII he stated that he was married and lived with his wife and that they were married at San Antonio on September 27, 1948. [37a] He showed that he was employed by the Great Lakes Steel Corporation and devoted 40 hours per week to this work. [37a-38a]

In Series X he said he had completed 8 years of elementary education and 2 years of high school, but was not graduated from high school and that he had received private instruction and Bible training by H. Graffis from November 19, 1949, to October 1, 1950. [38a]

He signed Series XIV showing that he was conscientiously opposed to participation in war and desired to be furnished the special form for conscientious objector. [39a]

On page 7 of the questionnaire, under "Registrant's Statement Regarding Classification," he requested the local board to classify him as a regular or ordained minister of religion. [39a]

In response to the request contained in Series XIV of the questionnaire certifying that he was a conscientious objector, the local board mailed to him on March 27, 1951, the special form for conscientious objector. [40a] He answered the questions therein and on April 2, 1951, returned it to the local board, after having signed series I(B) showing he was opposed to both combatant and noncombatant military service. [42a-47a]

In the special form he answered that he believed in the Supreme Being. [43a] He said that his duties to the Supreme Being were superior to any duties he owed as a result of any human relationship. He said he believed his obligations to the Creator were higher than those owed to the state. He relied on the Ten Commandments and the Bible. He believed in the love of God and the love of neigh-

bor. He added that anything that caused him to violate any of God's commandments he could not do. [43a] He stated that he had learned his conscientious objections as a result of intensive Bible study. [43a-44a]

He stated that P. C. Truscott was the presiding minister of the congregation that he customarily attended. He relied entirely on the knowledge of the Bible for the basis of his belief. [46a]

He gave references of persons who could corroborate his stand as one of Jehovah's Witnesses and who could certify that he was a conscientious objector. He then signed the form. [47a]

The local board considered the questionnaire and the special form and on April 10, 1951, classified him in III-A as a married man. [40a] This classification made it unnecessary for the board to consider his claim for exemption as a minister. It signified, however, that the board had bypassed his conscientious objector form. [40a] On April 25, 1951, the local board notified petitioner of the classification. [40a]

On May 7, 1951, Gonzales filed a request for a personal appearance to discuss his classification. On May 15, 1951, the board decided not to grant the personal appearance but rather to send his file to the appeal board, according to a notation in the margin of the letter requesting the appearance. On May 16, 1951, the local board forwarded the file of Gonzales to the appeal board on its own motion. [49a-50a] The appeal board affirmed the III-A classification on June 12, 1951. [40a, 50a] Notice of this was sent to him on June 15, 1951. [40a]

He remained in the classification of a married man until January 8, 1952. On that date he was placed in Class I-A by the local board and so notified. [40a] On January 16, 1952, petitioner requested a personal appearance. [50a] The local board set January 29, 1952, for the hearing [40a, 51a], which was first postponed to February 4, 1952, and

then adjourned because of a lack of a quorum to February 12, 1952. [40a, 51a]

On February 12, 1952, a personal appearance was conducted. A stenographer was present and made a transcript of the hearing. [40a, 52a-60a] The memorandum of the personal appearance showed that Gonzales was ordained in February 1950. [51a] He testified that he became a full-time pioneer minister on October 1, 1950. He said: "I give 100 hours per month or about 1200 hours per year to ministerial activity." [51a, 53a]

He pointed out that working 40 hours per week did not interfere with his ministerial duties and the reason he did not quit Great Lakes Steel Corporation was because it did not interfere with the performance of his full-time pioneer ministry. [53a]

He stated he based his conscientious objections upon the teachings of the Bible that "We should not kill and should love our neighbors as ourselves." [54a] He said he did not have a certificate of ordination but that his ministry was proved by the hours he worked and the knowledge he had of the Bible. He said he was the advertising servant for the Downtown Unit of Jehovah's Witnesses in Detroit. He then added that he had a regular parish or personally assigned territory where he preached. [55a-56a] He showed he had a congregation and place of meeting and that he preached in various places in the homes of the people, as well as the hall where the ministry school is conducted. [55a-56a]

He stated he was employed at the Great Lakes Steel Corporation on the midnight shift because he had put his "minister's duties first" and that if he could not put them first he would have to get another job. He said the Great Lakes Steel Corporation "worked it out for me." [56a]

He informed the members of the local board that he had attended a regular Theocratic Ministry School where he prepared himself for the ministry. He stated that it is not a school of theology, but rather a school where the Bible is

taught. He referred to the text book, *Theocratic Aid to Kingdom Publishers*. [56a-57a]

He answered that the Great Lakes Steel Corporation manufactured some articles that are used in war. He said that did not have any bearing on his belief any more than his paying an income tax. He said he would not assist a person injured in battle. When asked why he helped the war effort by working in a defense plant he stated he had to make his living some way. Even if he raised pigs, he said, he would be doing the same thing when he paid his income tax. He said he did not know where the money went and that it was not his business. He said by working and paying income taxes he was rendering to Caesar the things that were Caesar's. [56a-58a]

He was asked if he would be willing to fight for Caesar. He said he would not give his life to Caesar because it did not belong to Caesar; it belonged to God who gave it. He could obey only those laws of man that are not against God's commands. The judge of what belongs to God and what to Caesar was God's Word, the Bible. He said he would determine what he should do by using the Word of God. [58a]

He asked permission to call before the board the presiding minister of his congregation, Paul Truscott, to verify his testimony that he was a pioneer full-time minister. The board assured him that since he had made these statements under oath, "we do not doubt it." [59a]

The local board made no decision on February 12. It did so at a later date and on February 19, 1952, it classified petitioner in I-A. [40a]

On February 19, 1952, the local board ordered him to report for armed forces physical examination on February 28. [40a, 60a-61a] On February 20, Gonzales appealed to the appeal board. The appeal was filed on February 25. [40a, 61a] On February 28, he appeared for the examination and on April 8, he was mailed a certificate of acceptability. [41a, 61a-62a] His file was forwarded to the appeal board on April



8, 1952. [40a] On April 14, 1952, the State Director of Selective Service transmitted the file to the appeal board. [62a-64a]

On June 6, 1952, the appeal board, having determined that petitioner should not be classified in I-O or in a class lower than I-O, forwarded the file to the United States Attorney under the provisions of Section 1626.25 for advisory recommendation by the Department of Justice. [41a, 64a-66a]

After the file was forwarded to the Department of Justice an extensive FBI investigation was conducted. [66a-68a] This was followed by a reference of the file to a hearing officer of the Department of Justice. The hearing officer notified petitioner to appear before him on August 5, 1952, for a hearing on the sincerity of his conscientious objections. [11a-12a]

The hearing officer, John C. Ray, was called as a witness and testified in behalf of the Government in the court below. [10a-20a] He identified the report made by him of the hearing and mailed to the Department of Justice. [11a-12a] The hearing officer's report was read into the record. [11a-16a]

The FBI report showed that petitioner was "well regarded in the several communities in which he has lived and that he and his wife are said to be very religious." [13a-14a] They held Bible studies in their home and devoted considerable time to religious work. The investigation of the FBI disclosed that he was "a devoted member of the sect and applies himself earnestly to his religious work" [13a-14a]; that he served as advertising servant and supervisor of the distribution of the religious magazines for the congregation with which he was associated; and that from February 1950 to September 1950 he "worked at least twenty hours each month doing public preaching; distributing literature, conducting Bible studies and making 'back calls' [on] interested persons." [14a] The report showed that Gonzales thereafter became a pioneer or full-time minister of Jehovah's Witnesses. [14a] As such he was required to put in a

minimum of one hundred hours monthly to religious work. [14a]

The hearing officer found that Gonzales "appeared to be a sincere Jehovah's Witness and as such is conscientiously opposed to war. He refuses combatant and non-combatant service and claims classification as an ordained minister by virtue of his baptism in the Jehovah's Witnesses sect in February, 1950. As is customary with Jehovah's Witnesses, registrant claimed that his regular bread-earning work was merely an avocation and that his ministry was his true vocation. Besides his claim of being a minister, registrant also alternatively claimed to be a conscientious objector. He disclaimed being a pacifist and under certain circumstances, if attacked, he would defend himself and members of his family to the point of taking life." [15a]

The hearing officer concluded that although Gonzales was a full-time minister, "his affiliation with the sect has been too recent to warrant acceptance thereof as a deep-seated conviction. Until the fall of 1949 he was a Catholic and his conversion to the Jehovah's Witnesses is too closely related to his selective service status to be accepted yet as genuine." [15a] The hearing officer recommended against both the ministerial and conscientious objector classifications. He suggested I-A classification. [15a-16a] His report was mailed on August 11, 1952, to T. Oscar Smith, Special Assistant to the Attorney General, Washington, D. C. [16a]

The hearing officer testified at the trial. [10a-20a] He said that Gonzales gave the usual grounds given by others of Jehovah's Witnesses as basis for his claim as a conscientious objector, making the usual Biblical quotations [17a]; that Gonzales had applied himself to his belief [17a]; and he got the impression that Gonzales was a sincere Jehovah's Witness. [18a-19a] He based his denial of the conscientious objector claim to Gonzales solely on the fact that petitioner's "conversion to the Jehovah's Wit-



nesses is too closely related to his selective service status," since petitioner had been a Catholic until the fall of 1949. [15a, 19a-20a]

When asked whether a person "could not be a conscientious objector today because he was not yesterday?" the hearing officer refused to answer. [19a-20a] He again said on cross-examination that the only basis for the adverse recommendation was the time element. [20a]

The report of the hearing officer to the Attorney General does not appear in the file. [20a-21a]

The local board clerk testified that only the recommendation from the Department of Justice (a letter from the Assistant to the Attorney General) appeared in the file. The recommendation of the Attorney General merely referred to the report. [21a] The clerk testified about the recommendation of the Attorney General. it was read into evidence. [21a]

The recommendation of the Attorney General referred to the report of the hearing officer. [66a-68a] It confirmed the fact that Gonzales was "a sincere Jehovah's Witness" but concluded that his affiliation "with that sect has been too recent and too closely related to his draft status to warrant the acceptance of his conscientious objector position as genuine." [67a-68a] The Attorney General stated that Gonzales became a member of Jehovah's Witnesses in February 1950, one month after his registration in January 1950. He said that this was despite "the fact that his wife had been a member for many years," and that it "lends weight to this conclusion." [68a]

The recommendation of the Attorney General to the appeal board is dated December 1, 1952. It appears in the draft board file. [66a-68a] No notice of filing it was given to petitioner. The appeal board acted upon the recommendation without giving Gonzales an opportunity to answer the report and classified him in I-A on December 11, 1952. [41a, 69a] This made him liable for military training and service and denied his claim for exemption as a minister or classi-

fication as a conscientious objector. He was notified of this classification on December 15, 1952. [41a]

On December 21, 1952, Gonzales wrote to the State Director requesting a review of his case. [69a] On January 6, 1953, the local board transmitted his file to the State Director upon request of that official. [70a-71a] On January 13, 1953, the state director informed Gonzales and the local board that no action would be taken and no further review was permitted. [71a-72a]

On February 3, 1953, petitioner was ordered to report for induction on February 19. [41a, 73a] He reported on February 19, but refused to submit to induction. [41a, 77a-78a] He was reported to the United States Attorney as a delinquent. [41a, 76a] He was indicted for refusing to submit to induction. [2a]

#### HISTORY OF THE ACTION

The indictment charged that petitioner violated the Universal Military Training and Service Act by refusing to submit to induction. [2a]

On May 14, 1953, petitioner was arraigned. He pleaded not guilty. [1a] He waived the right of trial by jury on July 7, 1953, the date his trial began in the court below. The trial continued to the next day. The court heard evidence. At the conclusion of the evidence a motion for judgment of acquittal was filed. The court took the case under advisement and reserved decision on July 13, 1953. The court below on September 22, 1953, filed a memorandum opinion denying the motion for judgment of acquittal and finding petitioner guilty. [1a] The opinion is printed in the record. [81a-92a] The trial court sentenced petitioner on October 26, 1953, to the custody of the Attorney General for a period of three years and ordered him to pay a fine of \$500.00. [1a, 93a]

A notice of appeal was timely filed. [94a] Motion for bail was denied by the trial court. [94a] Application for

bail pending appeal was made to the Court of Appeals and allowed by it. The record was duly filed and the case was fully argued, briefed and submitted to the Court of Appeals. [97a] The Court of Appeals on April 15, 1954, entered its judgment affirming the conviction. [97a] The clerk of the Court of Appeals has filed in this Court a certified copy of the printed transcript of the record. [1a-101a] This petition for writ of certiorari is timely filed in this Court.

### **SPECIFICATION OF ERRORS TO BE URGED**

The Court of Appeals erred in holding that—

(1) Self-defense and willingness to use force to save his life was basis in fact for the denial of the conscientious objector status;

(2) Petitioner's late acceptance of his sincere conscientious objections was basis in fact for the denial of the exemption from participation in the armed forces;

(3) Petitioner's willingness to work in a defense plant was basis in fact for the denial of the conscientious objector status;

(4) Other members of Jehovah's Witnesses had gone into the armed forces and this may be considered as basis in fact for denial of the conscientious objector status;

(5) Failure to give the petitioner an opportunity to answer the adverse recommendation by the Department of Justice before classification by the appeal board was not a denial of procedural due process of law;

(6) The judgment of the trial court should not be reversed but affirmed.

## REASONS FOR GRANTING THE WRIT

### I.

Reliance upon the willingness of petitioner to use force to defend his life as basis in fact by the Court of Appeals [15a, 99a] is in direct conflict with *Annett v. United States*, 205 F. 2d 689 (10th Cir. June 26, 1953); *Taffs v. United States*, 208 F. 2d 329 (8th Cir. Dec. 7, 1953), certiorari denied 74 S. Ct. 532 (March 15, 1954); and *United States v. Pekarski*, 207 F. 2d 930 (2d Cir. Oct. 23, 1953); all holding that willingness to use force in self-defense or in defense of one's church is no basis in fact for a denial of the conscientious objector status. (See the opinion of Mr. Justice Douglas in granting bail on December 10, 1953, in *Clark v. United States*, 74 S. Ct. 357, 98 L. Ed. 171.) Because of this direct conflict on the same matter by the court below and the other courts of appeal, the Court should grant certiorari to settle the conflict.

Before concluding the discussion under this section of the discussion on the reasons for granting the writ it is important to call to the attention of the Court what the Acting Solicitor General said in his petition for writ of certiorari in *Taffs v. United States*, No. 576, October Term, 1953, at page 11:

"We do not here seek review of the holding of the court below that the expressed willingness of the registrant and other Jehovah's Witnesses to use force, even to the extent of killing, in self-defense or in defense of home, family, or associates, does not of itself exclude them from the classification of conscientious objectors. The Department of Justice in its instructions to hearing officers for conscientious objector cases has taken the same position. See Appendix B, *infra*, pp. 20-24. See *Annett v. United States*, 205 F. 2d 689 (C. A. 10). Nor do we seek review of the determination that this particular registrant was sincere

in the beliefs expressed by him and a *bona fide* member of Jehovah's Witnesses."

## II.

The holding by the court below that, notwithstanding that petitioner was a *bona fide* Jehovah's Witness and sincere in his objections to participation in war, he was not entitled to classification as a conscientious objector because he reached his conscientious objections too late [99a] is a holding that is in direct conflict with the holding of the Court of Appeals in *Schuman v. United States*, 208 F. 2d 801 (9th Cir. Dec. 21, 1953). In that case Chief Judge Denman said:

"The length of time one has been connected with a faith has no bearing upon whether one is entitled to exemption as a conscientious objector. The only question to be considered is whether the registrant has a sincere (i.e., 'conscientious') religious opposition to participation in war in any form. The Hearing Officer concluded that Schuman was 'sincere in his religious belief' but because he had not been 'sincere' long enough [Footnote 10:] (Cf. Acts, Ch. 9) recommended that exemption be denied. This is but another example of relying upon suspicion rather than on affirmative evidence."

See also *United States v. Hartman*, 209 F. 2d (2d Cir. Jan. 8, 1954); *Taffs v. United States*, 208 F. 2d 329 (8th Cir. Dec. 7, 1953).

It is submitted that there is direct conflict on the same matter by the court below and the Court of Appeals for the Ninth Circuit. This conflict gives a ground for the granting of certiorari here to settle the conflict.

## III.

The next ground for granting certiorari is that here is presented a very important question of federal law which has not been, but which ought to be, determined by this Court. It is whether willingness on the part of the thousands of conscientious objectors to indirectly participate in the war effort by doing work in a defense plant forfeits their exemption from direct participation in the armed forces.

The courts below held that they could lose their conscientious objector status if they worked or were willing to work in a defense plant. [84a, 85a, 100a] The petitioner says that, in the absence of an express authorization from Congress, the holding below was in error. The holding was judicial legislation rather than statutory construction.

The question is, therefore, very important because it involves the proper administration of the law by thousands of administrative officers affecting the rights of thousands of registrants throughout the entire United States. The case does not involve one person or one group of persons. But the rights of all conscientious objectors in the United States to do work of their own choice and keep their exempt status is involved under the act and the regulations. The nationwide effect and the large class of persons affected by the ruling make the question extraordinarily important so as to command a review and determination by this Court.

The Department of Justice did not place great reliance on the fact that Gonzales was employed in the steel plant. But the trial court and the local board gave consideration to this fact. Gonzales said that his conscience was clear. Notwithstanding the type of work that he did, he was still conscientiously opposed to participation in war in the armed forces in any form.

Petitioner submits that the local board and the trial court have misinterpreted Section 6(j) of the act. The court below erroneously approved this. Congress never provided that the conscientious objections must be to "war in any form." (*Taffs v. United States*, 208 F. 2d 329 (8th Cir. Dec. 7,



1953), certiorari denied March 15, 1954, 74 S. Ct. 532). Congress did not hold that a conscientious objector who was not opposed to self-defense and employment in defense work was not a conscientious objector. It is direct participation in war in any form that is the subject matter of the statutory provision for the conscientious objector. Nothing whatever is said in the act or the regulations or in the legislative history that indicates anything to the effect that if a person is willing to do a certain type of work and indirectly participates in the war effort he cannot be considered a conscientious objector having conscientious scruples to direct participation in war in any form even though he was willing to indirectly participate by performing secular defense work as a means of employment. If the unreasonable interpretation placed upon the act by the trial court and the local board, which was adopted by the Court of Appeals, is accepted it will authorize an unending and uncontrollable forfeiture of bona fide conscientious objector claims. Every type of work and act that may be conceivably thought of remotely and indirectly contributing to the war effort can be relied upon to deny the conscientious objector status. This is contrary to the intent of Congress.

Congress did not intend to allow an inquest to be held as to the kind of work that a registrant did or was willing to do. Congress intended to protect every person who had conscientious objections based upon religious grounds to direct participation in war in any form. Congress did not make the factors relied upon by the trial court and the local board, which were approved by the Court of Appeals, as any basis in fact for the denial of the conscientious objector claim.

Neither the act nor the regulations make work that a person does that indirectly contributes to the war effort a criterion to follow in the determination of his conscientious objections. The sole questions for determination of conscientious objection are: (1) does the person object to participation in the armed forces as a soldier? (2) does

he believe in the Supreme Being? (3) does this belief carry with it obligations to God higher than those owed to the state? (4) does his belief originate from a belief in the Supreme Being and not from a political, sociological, philosophical or personal moral code?

Gonzales' case commands affirmative answers to all these questions. He fits the statutory definition of a conscientious objector.

It is entirely irrelevant and immaterial for the courts below to hold that there was basis in fact because Gonzales was willing to work in a steel plant. This was not an element to consider and in any event it was no basis in fact according to the law for the denial of his claim. It did not impeach or dispute in any way what he said in his questionnaire and conscientious objector form, all of which was corroborated by the FBI report.

The law does not authorize the draft board and the courts below to invent fictitious and foreign standards and use them to speculate against evidence and facts that are undisputed.—*Dickinson v. United States*, 346 U. S. 389 (Nov. 30, 1953); *Schuman v. United States*, 208 F. 2d 801 (9th Cir. Dec. 21, 1953); *Annett v. United States*, 205 F. 2d 689 (10th Cir.); *United States v. Alvies*, 112 F. Supp. 618 (N. D. Cal. S. D. 1953); *United States v. Graham*, 109 F. Supp. 377 (W. D. Ky. 1952); *United States v. Everngam*, 102 F. Supp. 128 (D. W. Va. 1951).

The question of employment and work performed by one who claims to be a conscientious objector becomes material only when the type of work willing to be done by the conscientious objector is direct participation of a combatant or noncombatant nature.

The Congress of the United States in passing the Universal Military Training and Service Act provided for two kinds of conscientious objectors. One is a person who has objections only to the performance of combatant service. He is recognized as willing to wear a uniform and do anything in the armed forces except kill or carry a gun. This



type of conscientious objector does not have his conscience questioned because of the type of work he is willing to perform even though it may be in the armed forces. No board or official of the government may deny a registrant his conscientious objector claim to the I-A-O classification (limited military service as a conscientious objector opposed to combatant military service only) because of his willingness to perform noncombatant service in the armed forces, thus helping the armed services do a job of killing.

It is submitted also that the conscientious objector to both combatant and noncombatant military service ought not be denied his conscientious objector classification because of the kind of work he is doing outside the armed services that indirectly contributes to the war effort. The law disqualifies no one on such ground. A reasonable interpretation of the act and the regulations would not make the type of employment that a registrant is willing to do relevant so long as it does not involve direct participation in combatant or noncombatant military service.

The tremendous importance of the question here discussed is best illustrated by a showing of how far the holding of the courts below, when given its logical extension, pushes conscientious objectors out from under the protection of the law. Should this interpretation of the statute be accepted as the law then an unreviewable engine of speculation, forfeiture and discrimination has been placed in the hands of the administrators of the law. They can forfeit the conscientious objector claim for the willingness of the conscientious objector to do anything the draft boards or the Department of Justice finds to contribute remotely to the war effort or which may be considered indirect participation. If such an interpretation be accepted then a conscientious objector who farms and produces food ultimately used by the army, or who works on a railroad that carries troops or implements of warfare, or who pays his income taxes—over half of which is used to finance the armed forces and the defense effort of the nation—will be denied his exemp-

tion from direct participation in the armed forces. Then at last a ready device for evading the holding of this Court in *Dickinson v. United States*, 346 U. S. 389 (Nov. 30, 1954), has been found.

There are no other opinions discussing this question (except that of the trial court in this case) known to counsel for petitioner. The question was involved (but not discussed) in *Clark v. United States*, 74 S. Ct. 357, 98 L. Ed. 171. Mr. Justice Douglas said: "According to the papers before me he indicated that he was by religious training and belief opposed to participation in war but that he was willing to use force in defense of his family or his congregation and that he would work in a defense plant if in great economic need." He held that a substantial question was involved upon the appeal so as to permit bail.

It is submitted, therefore, that the question is of such great importance that the writ of certiorari should be granted so that it can be finally determined by this Court.

#### IV.

The holding of the court below that there was basis in fact is in direct conflict with *Schuman v. United States*, 208 F. 2d 801 (9th Cir. Dec. 21, 1953). (See also *Taffs v. United States*, 208 F. 2d 329 (8th Cir. Dec. 7, 1953), where the appellant was a latecomer to Jehovah's Witnesses.) In his petition for writ of certiorari the Acting Solicitor General told this Court that he did not question the sincerity of Taffs, and this statement was made notwithstanding that Taffs was also a latecomer to Jehovah's Witnesses and a very recent conscientious objector.—Also see *United States v. Hartman*, 209 F. 2d 366 (2d Cir. Jan. 8, 1954).

#### V.

The court below held that the procedural rights of petitioner were not violated when the appeal board considered and acted upon the adverse recommendation of the De-

partment of Justice. [100a] It was against the conscientious objector claim of petitioner. It was considered by the appeal board without giving him an opportunity to answer it before that appeal board made the final classification. This holding is in conflict with that of the United States Court of Appeals for the Fourth Circuit in *Brewer v. United States*, decided on April 5, 1954. In that case the court held that consideration by the appeal board of the secret FBI investigative report, inadvertently sent to the board by the Department of Justice, deprived him of due process of law. The court found that the registrant was denied the right to answer the FBI report before the appeal board. The court, however, said erroneously that a registrant was given the right by the regulations to see and answer the recommendation of the Department of Justice to the appeal board. Contrary to that statement are the regulations which do not grant the right. The holding by the court below on this point is also in direct conflict with *Degraw v. Toon*, 151 F. 2d 778 (2d Cir.), and *United States v. Balogh*, 157 F. 2d 939 (2d Cir. 1946), vacated 329 U. S. 692, and later affirmed 160 F. 2d 999 (2d Cir. 1947).

The holding by the court below [100a] that action on secret reports of a trial examiner or agency hearing officer without an opportunity to reply before final decision is made by the administrative agency is not a violation of due process of law conflicts directly with *Kwock Jan Fat v. White*, 253 U. S. 454, 459, 463, 464; *Morgan v. United States*, 304 U. S. 1, 22, 23; *Interstate Commerce Comm'n v. Louisville & Nashville R. R. Co.*, 227 U. S. 88, 91-92, 93; *United States v. Abilene & S. Ry. Co.*, 265 U. S. 274, 290; and *State of Washington ex rel. Oregon R. R. & Navigation Co. v. Fairchild*, 224 U. S. 510, 524.

In the case of *Morgan v. United States*, 304 U. S. 1, the Court said: "Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon

its proposals before it issues its final command. No such reasonable opportunity was accorded appellants." (304 U. S. at page 19) Identically the same secret proposal was made here by the Department of Justice, and the appeal board acted upon it in this case without the knowledge of the petitioner in time to protect himself. This star-chamber procedure prescribed by the regulations is a denial of due process of law. It conflicts with the "fair and just" provisions of Section 1(c) of the act, *supra*, page 6, and the Fifth Amendment to the United States Constitution.

There is another ground for granting the writ. It is the denial of procedural due process, which is also a grave question of nationwide importance. The procedure followed in this case is not a single isolated instance of a denial of due process that will not be repeated. It is the required procedure followed and to be carried out in thousands of cases. It is fixed by Sections 1626.25 and 1626.26 of the Selective Service Regulations. (See this petition, *supra*, at pages 9-12.) Thousands, in fact, tens of thousands of conscientious objectors, and all the many draft appeal board members, in consideration of claims of conscientious objectors, are involved in the questioned procedure here. The question will continue to be urged to this Court in the future until it is settled by this Court. It is submitted, therefore, that in the event that no conflict is found to exist here this Court ought to exercise its discretion here, take jurisdiction and grant the writ because an important question of federal law which ought to be determined, but which has not been determined by this Court, is presented here. The writ should be granted and the law determined so that the thousands of persons affected by the operation of the law will know what their respective rights and duties are.

### CONCLUSION

For the reasons above stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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May, 1954.

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**Supreme Court of the United States**

OCTOBER TERM, 1954

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**No. 69**

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**JOE VALDEZ GONZALES,**

*Petitioner*

*v.*

**UNITED STATES OF AMERICA,**

*Respondent*

---

**Petitioner's  
REPLY TO BRIEF IN OPPOSITION  
to Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Sixth Circuit**

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**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1954

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**No. 69**

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**JOE VALDEZ GONZALES,**

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---

MAY IT PLEASE THE COURT:

I.

It is argued by the Government that there is no conflict in the holding by the court below (that there was basis in fact for the denial of the conscientious objector status) and the holdings by other courts of appeals in identical cases involving the same showing made by other Jehovah's Witnesses.

The undisputed documentary evidence in the file before



the appeal board showed that the petitioner was conscientiously opposed to participation in combatant and non-combatant military service. He showed: (1) he believed in the Supreme Being, (2) he was opposed to participation in combatant and noncombatant military service, (3) he based his belief and opposition to service on religious training and belief as one of Jehovah's Witnesses, (4) such stand did not spring from political, sociological or philosophical beliefs. This showing brought him squarely within the statute and the regulation providing for classification as a conscientious objector. This entitled him to exemption from combatant and noncombatant military training and service.

It has been held by many courts of appeal that the rule laid down in *Dickinson v. United States*, 346 U. S. 389, holding that if there is no contradiction of the documentary evidence showing exemption as a minister that there is no basis in fact for the classification also applies in cases involving claims for classification as conscientious objectors. —*Weaver v. United States*, 8th Cir., Feb. 19, 1954, 210 F. 2d 815; *Taffs v. United States*, 8th Cir., Dec. 7, 1953, 208 F. 2d 329; *United States v. Hartman*, 2d Cir., Jan. 8, 1954, 209 F. 2d 366; *Pine v. United States*, 4th Cir., April 5, 1954, 212 F. 2d 93; *Jewell v. United States*, 6th Cir., Dec. 22, 1953, 208 F. 2d 770; *Schuman v. United States*, 9th Cir., Dec. 21, 1953, 208 F. 2d 801; *Jessen v. United States*, 10th Cir., May 7, 1954, — F. 2d —; *United States v. Close*, 7th Cir., June 10, 1954, — F. 2d —; *contra United States v. Simmons*, 7th Cir., June 15, 1954, — F. 2d —.

Recently in *Jessen v. United States*, 10th Cir., May 7, 1954, — F. 2d —, after quoting from *Dickinson v. United States*, 346 U. S. 389, the court said:

“Here, the uncontroverted evidence supported the registrant’s claim that he was opposed to participation in war in any form. There was a complete absence of any impeaching or contradictory evidence. It follows that the classification made

by the State Appeal Board was a nullity and that Jessen violated no law in refusing to submit to induction."

The decision of the court below is in direct conflict with the holdings in other cases decided by other courts of appeal. In those cases the appellants, like petitioner here, were Jehovah's Witnesses. They showed the same religious belief, the same objection to service and the same religious training. While different speculations were relied upon by the Government which were discussed and rejected by the courts in those cases, the courts were also called upon to say, on facts identical to the facts in this case, whether there was basis in fact. For instance, see *Jessen* where the Tenth Circuit (after following *Taffs v. United States*, 8th Cir., Dec. 7, 1953, 208 F. 2d 329) said: "The remaining question is whether there was any basis in fact for the classification made by the State Appeal Board."

The holdings of other circuits with which the holding of the court below (that there was basis in fact for the denial of the classification) directly conflicts are: *Annett v. United States*, 10th Cir., June 26, 1953, 205 F. 2d 689; *United States v. Pekarski*, 2d Cir., Oct. 23, 1953, 207 F. 2d 930; *Taffs v. United States*, 8th Cir., Dec. 7, 1953, 208 F. 2d 329; *Jewell v. United States*, 6th Cir., Dec. 22, 1953, 208 F. 2d 770; *Schuman v. United States*, 9th Cir., Dec. 21, 1953, 208 F. 2d 801; *United States v. Hartman*, 2d Cir., Jan. 8, 1954, 209 F. 2d 366; *Pine v. United States*, 4th Cir., April 5, 1954, 212 F. 2d 93; *Jessen v. United States*, 10th Cir., May 7, 1954, — F. 2d —; *United States v. Close*, 7th Cir., June 10, 1954, — F. 2d —. And these cases ought not to be pushed aside on the specious but factitious ground that, because the courts in some of those cases discussed the speculations urged on the courts as basis in fact, the cases are different. They are not different because on the question of whether or not there was basis in fact the evidence in each case is identical to the facts in this case and the holdings were the opposite to that made by the court below in this case. Such attempted dis-

tinction would be a distinction without a difference. The cases above cited are identical to the facts in this case insofar as the statements in the draft board record showing conscientious objection are concerned.

It is submitted, therefore, that there is a direct conflict between the holding of the court below and the holding of other courts of appeals on this question. This gives a basis for granting the writ of certiorari.

## II.

The Government contends on pages 16 and 17 of its brief that there is no error committed when the petitioner was deprived of due process of law by the Department of Justice and the appeal board. It is said that the reason for the contention is that it is harmless error because the final recommendation of the Department of Justice is advisory only. The short answer to this is that it ceases to be advisory when the recommendation is accepted and acted upon by the appeal board.

The recommendation of the Department of Justice is advisory and may be rejected by the appeal board. This does not mean that denials of due process are harmless. When the recommendation is not rejected but the advice is followed then it becomes a link in the chain of administrative proceedings. A break in this link of the chain destroys the proceedings.—*United States v. Everngam*, D. W. Va., 1951, 102 F. Supp. 128; *United States v. Bouziden*, W. D. Okla., 1952, 108 F. Supp. 395.

The adoption and following of erroneous advice from the Department of Justice by the appeal board makes invalid the final classification. *Annett v. United States*, 10th Cir., 1953, 205 F. 2d 689; *Taffs v. United States*, 8th Cir., Dec. 7, 1953, 208 F. 2d 329; *Jessen v. United States*, 10th Cir., May 7, 1954, — F. 2d —; *United States v. Close*, 7th Cir., June 10, 1954, — F. 2d —. It cannot be argued, therefore that the illegal denial of right to answer did no harm. It has been held that where there is an illegal recommenda-

tion by the Department of Justice and the evidence shows that the registrant is a conscientious objector it must be concluded that the only reason for a denial of the conscientious objector claim is the illegal recommendation which makes the classification illegal.—*United States v. Close*, 7th Cir., June 10, 1954, — F. 2d —; *contra United States v. Simmons*, 7th Cir., June 15, 1954, — F. 2d —.

It is submitted that there is presented here an important and substantial question of law that has not been decided by this Court but which ought to be determined by this Court. This is a sufficient ground for granting certiorari.

WHEREFORE, it is submitted for the reasons set forth above and in the petition for writ of certiorari that the petition should be granted.

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June, 1954.

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# Supreme Court of the United States

OCTOBER TERM, 1954

**No. 69**

**JOE VALDEZ GONZALES,**

*Petitioner*

*v.*

**UNITED STATES OF AMERICA,**

*Respondent.*

**Petitioner's Supplemental Memorandum  
on Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Sixth Circuit**

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**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1954

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**No. 69**

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**JOE VALDEZ GONZALES,**

*Petitioner*

*v.*

**UNITED STATES OF AMERICA,**

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**Petitioner's Supplemental Memorandum  
on Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Sixth Circuit**

---

**MAY IT PLEASE THE COURT:**

Since the filing of petitioner's reply to brief in opposition there has been handed down by the United States Court of



Appeals for the Seventh Circuit a decision which is in direct conflict with the holding of the court below that the performance of civilian work in a defense plant was basis in fact for the denial of the conscientious objector status.

In *United States v. Wilson*, 7th Cir., July 15, 1954, — F. 2d —, the Court said:

“Neither do we think the defendant’s employment as a railroad telegraph operator was in any way inconsistent with his claim to exemption as a conscientious objector. Section 6(j) of the Act, 50 U. S. C. A. App. Sec. 456(j), provides exemption for persons conscientiously opposed to ‘participation in war in any form.’ It would be wholly unrealistic to construe this language to mean that a person whose civilian employment indirectly contributed to the war effort could not, therefore, meet the statutory test for exemption. Such a construction of the Act would completely nullify the provisions granting exemption to conscientious objectors, for it is difficult to conceive of any gainful activity which, in periods of extensive mobilization and training, would not in some manner aid the common purpose. Moreover, the Act expressly recognizes that one may engage in civilian work contributing to the national welfare without thereby losing the right to be classified as a conscientious objector. Section 6(j) provides that persons conscientiously opposed to noncombatant service in the armed forces shall be ordered to perform ‘such civilian work contributing to the maintenance of the national health, safety, or interest’ as may be considered appropriate by the local board. It is perfectly clear in this case that the nature of the defendant’s civilian occupation could not be a basis in fact for denying him the status of a conscientious objector.”



It is respectfully submitted that the conflict between the court below and the United States Court of Appeals for the Seventh Circuit warrants the granting of the writ of certiorari in this case.

Respectfully submitted,

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October 1, 1954.

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# Supreme Court of the United States

OCTOBER TERM, 1954

**No. 69**

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JOE VALDEZ GONZALES,

*Petitioner*

*v.*

UNITED STATES OF AMERICA,

*Respondent*

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ON PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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## BRIEF FOR PETITIONER

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### O N E

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### T W O

The hearing officer of the Department of Justice arbitrarily and capriciously recommended against petitioner's claim by rejecting the undisputed evidence that showed he was a conscientious objector to both combatant and noncombatant military service, on the ground that he became one of Jehovah's Witnesses and a conscientious objector too recently and that, therefore, he was not in good faith a conscientious objector. ....	41-51
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### T H R E E

The Department of Justice deprived Gonzales of his procedural rights to due process of law by not mailing a copy of the report of the hearing officer and its proposed recommendation to the appeal board to petitioner before the recommendation was mailed to the appeal board, and by not giving him an opportunity to rebut the adverse recommendation before the final appeal board classification, contrary to due process of law. ....	51-54
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# **Supreme Court of the United States**

OCTOBER TERM, 1954

**No. 69**

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**JOE VALDEZ GONZALES,**

*Petitioner*

*v.*

**UNITED STATES OF AMERICA,**

*Respondent*

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ON PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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## **BRIEF FOR PETITIONER**

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### **OPINIONS BELOW**

The opinion of the Court of Appeals is reported. (*Gonzales v. United States*, 6th Cir., April 15, 1954, 212 F. 2d 71) It appears in the record. [R. 98] A memorandum opinion of the district court also appears in the record. [R. 81-92] This opinion is also reported.—*United States v. Gonzales*, 120 F. Supp. 730.

## JURISDICTION

The judgment of the Court of Appeals was entered on April 15, 1954. [R. 97] The petition for writ of certiorari was filed within 30 days of the date of such judgment. The jurisdiction of this Court was invoked under 28 U. S. C. § 1254(1). (See also Rules 37(b)(2) and 45(a), Federal Rules of Criminal Procedure.) This Court granted the writ of certiorari on October 14, 1954. [R. 100]

## STATUTES AND REGULATIONS INVOLVED

Section 1(c) of the Universal Military Training and Service Act (50 U. S. C. App. § 451(c)) provides:

"The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy."—June 24, 1948, ch. 625, title I, § 1, 62 Stat. 604, amended June 19, 1951, ch. 144, title I, § 1(a) 65 Stat. 75.

Section 6(j) of the act (50 U. S. C. App. § 456 (j), 65 Stat. 75, 83, 86) provides:

*"Conscientious objectors.*—Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the Presi-

dent, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to non-combatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of

this title, to have knowingly failed or neglected to perform a duty required of him under this title. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. Each person whose claim for exemption from combatant training and service because of conscientious objections is sustained shall be listed by the local board on a register of conscientious objectors."

Section 12(a) of the act (50 U. S. C. App. § 462(a)) provides:

"... Any ... person ... who ... refuses ... service in the armed forces ... or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title ... shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than \$10,000, or by both such fine and imprisonment. . . ."

Section 1622.14 of the Selective Service Regulations (32 C. F. R. § 1622.14 (E. O. 10292, 16 F. R. 9862, Sept. 28, 1951)) provides:

*"Class I-O: Conscientious objector available for civilian work contributing to the maintenance of the national health, safety, or interest.—(a) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to both combatant and noncombatant training and service in the armed forces."*

Section 1626.25 of the Selective Service Regulations (32 C. F. R. § 1626.25) provides:



*"Special provisions when appeal involves claim that registrant is a conscientious objector.* (a) If an appeal involves the question whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the appeal board shall take the following action:

"(1) If the registrant has claimed, by reason of religious training and belief, to be conscientiously opposed to participation in war in any form and by virtue thereof to be conscientiously opposed to combatant training and service in the armed forces, but not conscientiously opposed to noncombatant training and service in the armed forces, the appeal board shall first determine whether or not such registrant is eligible for classification in a class lower than Class I-A-O. If the appeal board determines that such registrant is eligible for classification in a class lower than I-A-O, it shall classify the registrant in that class. If the appeal board determines that such registrant is not eligible for classification in a class lower than Class I-A-O, but is eligible for classification in Class I-A-O, it shall classify the registrant in that class.

"(2) If the appeal board determines that such registrant is not eligible for classification in either a class lower than Class I-A-O or in Class I-A-O, the appeal board shall transmit the entire file to the United States Attorney for the judicial district in which the office of the appeal board is located for the purpose of securing an advisory recommendation from the Department of Justice.

"(3) If the registrant claims that he is, by reason of religious training and belief, conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces, the appeal board shall first determine whether or not the registrant is eligible for classification in a class lower than Class I-O. If the appeal board finds that the registrant is not eligible for classification in a class lower than Class I-O, but does find

that the registrant is eligible for classification in Class I-O, it shall place him in that class.

“(4) If the appeal board determines that such registrant is not entitled to classification in either a class lower than Class I-O or in Class I-O, it shall transmit the entire file to the United States Attorney for the judicial district in which the office of the appeal board is located for the purpose of securing an advisory recommendation from the Department of Justice.

“(b) No registrant's file shall be forwarded to the United States Attorney by any appeal board and any file so forwarded shall be returned, unless in the ‘Minutes of Action by Local Board and Appeal Board’ on the Classification Questionnaire (SSS Form No. 100) the record shows and the letter of transmittal states that the appeal board reviewed the file and determined that the registrant should not be classified in either Class I-A-O or Class I-O under the circumstances set forth in paragraph (a) (2) or (4) of this section.

“(c) The Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrant. The registrant shall be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the appeal board (1) that if the registrant is inducted into the armed forces, he shall be assigned to noncombatant service, or (2) that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of induction be ordered by his local board to perform for a period of twenty-four consecutive months civilian work contributing to the maintenance of the national health, safety, or interest. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the appeal board that such objections be not sustained.

“(d) Upon receipt of the report of the Department of Justice, the appeal board shall determine the classification of the registrant, and in its determination it shall give consideration to, but it shall not be bound to follow, the recommendation of the Department of Justice. The appeal board shall place in the Cover Sheet (SSS Form No. 101) of the registrant both the letter containing the recommendation of the Department of Justice and the report of the Hearing Officer of the Department of Justice.”—E. O. 9988, 13 F. R. 4874, Aug. 21, 1948, as amended by E. O. 10292, 16 F. R. 9862, Sept. 28, 1951.

Section 1626.26 of the Selective Service Regulations (32 C. F. R. § 1626.26 (E. O. 9988, 13 F. R. 4874, Aug. 21, 1948, redesignated at 14 F. R. 5021, Aug. 13, 1949) provides:

*“Decision of appeal board.* (a) The appeal board shall classify the registrant, giving consideration to the various classes in the same manner in which the local board gives consideration thereto when it classifies a registrant, except that an appeal board may not place a registrant in Class IV-F because of physical or mental disability unless the registrant has been found by the local board or the armed forces to be disqualified for any military service because of physical or mental disability.

“(b) Such classification of the registrant shall be final, except where an appeal to the President is taken; *Provided*, That this shall not be construed as prohibiting a local board from changing the classification of a registrant in a proper case under the provisions of part 1625 of this chapter.”

## QUESTIONS PRESENTED

### I.

Whether the denial of the claim for classification of petitioner as a conscientious objector was without basis in fact and, consequently, the final I-A classification was arbitrary and capricious.

## II.

Whether petitioner's willingness to defend himself and his Christian brothers by the use of force in event of attack is basis in fact for a denial by the appeal board of the conscientious objector classification claimed by petitioner.

## III.

Whether a sincere and bona fide member of a religious group having religious objections to performance of military service may be denied his conscientious objector status under the act and the regulations for the reason that he is a recent convert and his conscientious objections are not old enough because they were acquired shortly before his registration under the draft law.

## IV.

Whether the act and the regulations permit the draft boards or the courts to deny the conscientious objector status because the objector to direct participation in the armed forces is willing to work in a defense plant that might be held to be indirect participation in the war effort.

## V.

Whether the fact that some members of Jehovah's Witnesses may choose to enter the armed forces and have done so may be considered as a basis in fact for the denial of the conscientious objector status to petitioner, notwithstanding that he sincerely believes in the tenets of Jehovah's Witnesses against direct participation in the armed forces, to such an extent that he cannot participate in the armed forces.

## VI.

Whether petitioner was denied his rights to procedural due process of law contrary to the act and the Fifth Amendment to the Constitution when the appeal board considered and acted upon the adverse recommendation

against petitioner without first giving petitioner an opportunity to answer the recommendation.

### STATEMENT OF THE CASE

Petitioner was indicted and charged in the district court with violation of the Universal Military Training and Service Act by refusing to submit to induction. [R. 2]

On May 14, 1953, petitioner was arraigned. He pleaded not guilty. [R. 1] He waived the right of trial by jury on July 7, 1953, the date his trial began in the district court. The trial continued to the next day. The court heard evidence. At the conclusion of the evidence a motion for judgment of acquittal was filed. The court took the case under advisement and reserved decision on July 13, 1953. On September 22, 1953, the trial court filed a memorandum opinion denying the motion for judgment of acquittal and finding petitioner guilty. [R. 1] The opinion is printed in the record. [R. 81-92] On October 26, 1953, the trial court sentenced petitioner to the custody of the Attorney General for a period of three years and ordered him to pay a fine of \$500.00. [R. 1, 93]

A notice of appeal was timely filed. [R. 94] Motion for bail was denied by the trial court. [R. 94] Application for bail pending appeal was made to the Court of Appeals and allowed by it. The record was duly filed and case was fully argued, briefed and submitted to the Court of Appeals. [R. 97] On April 15, 1954, the Court of Appeals entered its judgment of affirmance. The opinion of the Court of Appeals is in the record. [R. 97-99] The clerk of the Court of Appeals has filed in this Court a certified copy of the printed transcript of the record. R. [1-99]

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Petitioner was born July 22, 1931, at San Antonio, Texas. [R. 35] He registered with Local Board No. 95, Wayne County, Michigan, at Detroit, on January 4, 1950. [R. 34]

A classification questionnaire was mailed to him on February 28, 1951. [R. 34] He answered the questionnaire and returned it to the board on March 9, 1951. [R. 35]

He gave his name and address. [R. 36] In Series VI he stated he was a minister of religion and that he regularly and customarily served as such. He stated that he had been a minister of Jehovah's Witnesses since February 19, 1950. He stated that he had been formally ordained on February 19, 1950. [R. 37]

In Series VII he stated that he was married and lived with his wife and that they had been married at San Antonio on September 27, 1948. [R. 27] He showed that he was employed by the Great Lakes Steel Corporation and devoted forty hours per week to this work. [R. 37-38]

In Series X he said he had completed eight years of elementary education and two years of high school, but had not graduated from high school and that he had received private instruction and Bible training by H. Graffis from November 19, 1949, to October 1, 1950. [R. 38]

He signed Series XIV showing that he was conscientiously opposed to participation in war and desired to be furnished the special form for conscientious objector. [R. 39]

On page seven of the questionnaire, under "Registrant's Statement Regarding Classification," he requested the local board to classify him as a regular or ordained minister of religion. [R. 39]

In response to the request contained in Series XIV of the questionnaire certifying that he was a conscientious objector, on March 27, 1951, the local board mailed to him the special form for conscientious objector. [R. 40] He answered the questions therein and on April 2, 1951, returned it to the local board, after having signed series I(B) showing he was opposed to both combatant and non-combatant military service. [R. 42-47]

In the special form he answered that he believed in the Supreme Being. [R. 43] He said that his duties to the



Supreme Being were superior to any duties he owed as a result of any human relationship. He said he believed his obligations to the Creator were higher than those owed to the state. He relied on the Ten Commandments and the Bible. He believed in the love of God and the love of neighbor. He added that anything that caused him to violate any of God's commandments he could not do. [R. 43] He stated that he had learned his conscientious objections as a result of intensive Bible study. [R. 43-44]

He stated that P. C. Truscott was the presiding minister of the congregation that he customarily attended. He relied entirely on the knowledge of the Bible for the basis of his belief. [R. 46]

He gave references of persons who could corroborate his stand as one of Jehovah's Witnesses and who could certify that he was a conscientious objector. He then signed the form. [R. 47]

The local board considered the questionnaire and the special form and on April 10, 1951, classified him in III-A as a married man. [R. 40] This classification made it unnecessary for the board to consider his claim for exemption as a minister. It signified, however, that the board had bypassed his conscientious objector form. [R. 40] On April 25, 1951, the local board notified petitioner of the classification. [R. 40]

On May 7, 1951, Gonzales filed a request for a personal appearance to discuss his classification. On May 15, 1951, the board decided not to grant the personal appearance but rather to send his file to the appeal board, according to a notation in the margin of the letter requesting the appearance. On May 16, 1951, the local board forwarded the file of Gonzales to the appeal board on its own motion. [R. 49-50] The appeal board affirmed the III-A classification on June 12, 1951. [R. 40, 50] Notice of this was sent to him on June 15, 1951. [R. 40]

He remained in the classification of a married man until January 8, 1952. On that date he was placed in Class I-A



by the local board and so notified. [R. 40] On January 16, 1952, petitioner requested a personal appearance. [R. 50] The local board set January 29, 1952, for the hearing. [R. 40, 51] This was first postponed to February 4, 1952, and then adjourned, because of a lack of a quorum, to February 12, 1952. [R. 40, 51]

On February 12, 1952, a personal appearance was conducted. A stenographer was present and made a transcript of the hearing. [R. 40, 52-60] The memorandum of the personal appearance showed that Gonzales was ordained in February, 1950. [R. 51] He testified that he became a full-time pioneer minister on October 1, 1950. He said: "I give 100 hours per month or about 1200 hours per year to ministerial activity." [R. 51, 53]

He pointed out that working 40 hours per week did not interfere with the performance of his ministerial duties and that the reason he did not quit Great Lakes Steel Corporation was that it did not interfere with the performance of his full-time pioneer ministry. [R. 53]

He stated he based his conscientious objections upon the teachings of the Bible that "we should not kill and should love our neighbors as ourselves." [R. 54] He said he did not have a certificate of ordination but that his ministry was proved by the hours he worked and the knowledge he had of the Bible. He said he was the advertising servant for the Downtown Unit of Jehovah's Witnesses in Detroit. He then added that he had a regular parish or personally assigned territory where he preached. [R. 55-56] He showed he had a congregation and place of meeting and that he preached in various places in the homes of the people as well as in the hall where the ministry school is conducted. [R. 55-56]

He stated he was employed at the Great Lakes Steel Corporation on the midnight shift because he had put his "minister's duties first" and that if he could not put them first he would have to get another job. He said the Great Lakes Steel Corporation "worked it out for me." [R. 56]

He informed the members of the local board that he had attended a regular Theocratic Ministry School where he prepared himself for the ministry. He stated that it is not a school of theology, but rather a school where the Bible is taught. He referred to the textbook *Theocratic Aid to Kingdom Publishers*. [R. 56-57]

He answered that the Great Lakes Steel Corporation manufactured some articles that are used in war. He said that did not have any bearing on his belief any more than did his paying an income tax. He said he would not assist a person injured in battle. When asked why he helped the war effort by working in a defense plant he stated he had to make his living some way. Even if he raised pigs, he said, he would be doing the same thing when he paid his income tax. He said he did not know where the money went and that it was not his business. He said by working and paying income taxes he was rendering to Caesar the things that were Caesar's. [R. 56-58]

He was asked if he would be willing to fight for Caesar. He said he would not give his life to Caesar, because it did not belong to Caesar; it belonged to God who gave it. He could obey only those laws of man that are not against God's commands. The judge of what belongs to God and what to Caesar was God's Word, the Bible; he would determine what he should do by using the Word of God. [R. 58]

He asked permission to call before the board the presiding minister of his congregation, Paul Truscott, to verify his testimony that he was a pioneer full-time minister. The board assured him that since he had made these statements under oath, "we do not doubt it." [R. 59]

The local board made no decision on February 12. It did so at a later date and on February 19, 1952, it classified petitioner in I-A. [R. 40]

On February 19, 1952, the local board ordered him to report for armed forces physical examination on February 28. [R. 40, 60-61] On February 20, Gonzales appealed

to the appeal board. The appeal was filed on February 25. [R. 40, 61] On February 28 he appeared for the examination and on April 8 he was mailed a certificate of acceptability. [R. 41, 61-62] His file was forwarded to the appeal board on April 8, 1952. [R. 40] On April 14, 1952, the State Director of Selective Service transmitted the file to the appeal board. [R. 62-64]

On June 6, 1952, the appeal board, having determined that petitioner should not be classified in I-O or in a class lower than I-O, forwarded the file to the United States Attorney, under the provisions of Section 1626.25, for advisory recommendation by the Department of Justice. [R. 41, 64-66]

After the file was forwarded to the Department of Justice an extensive FBI investigation was conducted. [R. 66-68] This was followed by a reference of the file to a hearing officer of the Department of Justice. The hearing officer notified petitioner to appear before him on August 5, 1952, for a hearing on the sincerity of his conscientious objections. [R. 11-12]

The hearing officer, John C. Ray, was called as a witness and testified in behalf of the Government in the trial court. [R. 10-20] He identified the report of the hearing made by him and mailed to the Department of Justice. [R. 11-12] The hearing officer's report was read into the record. [R. 11-16]

The FBI report showed that petitioner was "well regarded in the several communities in which he has lived and that he and his wife are said to be very religious." [R. 13-14] They held Bible studies in their home and devoted considerable time to religious work. The investigation of the FBI disclosed that he was "a devoted member of the sect and applies himself earnestly to his religious work" [R. 12-14]; that he served as advertising servant and supervisor of the distribution of the religious magazines for the congregation with which he was associated; and that from February, 1950, to September, 1950, he "worked at least

twenty hours each month doing public preaching, distributing literature, conducting Bible studies and making 'back calls' [on] interested persons." [R. 14] The report showed that Gonzales thereafter became a pioneer or full-time minister of Jehovah's Witnesses. [R. 14] As such he was required to put in a minimum of one hundred hours monthly in preaching. [R. 14]

The hearing officer found: "[Gonzales] appeared to be a sincere Jehovah's Witness and as such is conscientiously opposed to war. He refuses combatant and noncombatant service and claims classification as an ordained minister by virtue of his baptism in the Jehovah's Witnesses sect in February, 1950. As is customary with Jehovah's Witnesses, registrant claimed that his regular bread-earning work was merely an avocation and that his ministry was his true vocation. Besides his claim of being a minister, registrant also alternatively claimed to be a conscientious objector. He disclaimed being a pacifist and under certain circumstances, if attacked, he would defend himself and members of his family to the point of taking life." [R. 15]

The hearing officer concluded (although Gonzales was a full-time minister): "his affiliation with the sect has been too recent to warrant acceptance thereof as a deep-seated conviction. Until the fall of 1949 he was a Catholic and his conversion to the Jehovah's Witnesses is too closely related to his selective service status to be accepted yet as genuine." [R. 15] The hearing officer recommended against both the ministerial and conscientious objector classifications. He suggested the I-A classification. [R. 15-16] On August 11, 1952, his report was mailed to T. Oscar Smith, Special Assistant to the Attorney General, Washington, D. C. [R. 16]

The hearing officer testified at the trial. [R. 10-20] He said that Gonzales gave the usual grounds given by others of Jehovah's Witnesses as basis for his claim as a conscientious objector, making the usual Biblical quotations [R. 16]; that Gonzales had applied himself to his belief [R. 17]; and that he got the impression that Gonzales was

a sincere Jehovah's Witness. [R. 18-19] He based his denial of the conscientious objector claim to Gonzales solely on the fact that petitioner's "conversion to the Jehovah's Witnesses is too closely related to his selective service status," since petitioner had been a Catholic until the fall of 1949. [R. 13, 15, 19-20]

When asked whether a person "could not be a conscientious objector today because he was not yesterday" the hearing officer refused to answer. [R. 19-20] He again said on cross-examination that the only basis for the adverse recommendation was the time element. [R. 20]

The report of the hearing officer to the Attorney General does not appear in the file. [R. 20-21]

The local board clerk testified that only the recommendation from the Department of Justice (a letter from the Assistant to the Attorney General) appeared in the file. The recommendation of the Attorney General merely referred to the report. [R. 21] The clerk testified about the recommendation of the Attorney General. It was read into evidence. [R. 21]

The recommendation of the Attorney General referred to the fact that Gonzales was "a sincere Jehovah's Witness" but concluded that his affiliation "with that sect has been too recent and too closely related to his draft status to warrant the acceptance of his conscientious objector position as genuine." [R. 67-68] The Attorney General stated that Gonzales became a member of Jehovah's Witnesses in February 1950, one month after his registration in January 1950. He said that this was despite "the fact that his wife had been a member for many years," and that it "lends weight to this conclusion." [R. 68]

The recommendation of the Attorney General to the appeal board is dated December 1, 1952. It appears in the draft board file. [R. 66-68] No notice of filing it was given to petitioner. The appeal board acted upon the recommendation without giving Gonzales an opportunity to answer the report and classified him in I-A on December 11, 1952.

[R. 41, 69] This made him liable for military training and service and denied his claim for exemption as a minister or classification as a conscientious objector. He was notified of this classification on December 15, 1952. [R. 41]

On December 21, 1952, Gonzales wrote to the state director, requesting a review of his case. [R. 69] On January 6, 1953, the local board transmitted his file to the state director upon request of that official. [R. 70-71] On January 13, 1953, the state director informed Gonzales and the local board that no action would be taken and no further review was permitted. [R. 71-72]

On February 3, 1953, petitioner was ordered to report for induction on February 19. [R. 41, 73] He reported on February 19, 1953, but refused to submit to induction. [R. 41, 77-78] He was reported to the United States Attorney as a delinquent. [R. 41, 76] He was indicted for refusing to submit to induction. [R. 2]

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Question I (*supra*, page 7, this brief) was raised in the trial court under ground 4 of the motion for judgment of acquittal. [R. 78-79] The trial court recognized this contention. [R. 83] It found that there was basis in fact for the denial of the conscientious objector status. [R. 83-85] One basis for the denial of the conscientious objector claim, the trial court declared, was the fact that Gonzales was a late convert of Jehovah's Witnesses. [R. 83-84] The trial court also found as basis in fact for the denial of the full conscientious objector status that Gonzales was engaged in work in a defense plant engaged in the manufacture of some articles of war. [R. 84] The finding that Gonzales was a late-comer as one of Jehovah's Witnesses is made the basis of point III (*supra*, page 8, this brief). The reliance upon the employment in a defense plant as basis in fact for the denial of the conscientious objector status is made the basis of question IV (*supra*, page 8, this brief).

The trial court also found that because some of Jeho-



vah's Witnesses had joined the army, and Gonzales stated it was up to each one to determine whether he was conscientiously opposed to service in the armed forces, this was basis in fact. [R. 84] This is made the basis of question V (*supra*, page 8, this brief).

Petitioner also complained of the making of the recommendation by the Department of Justice against his conscientious objector claim without giving him an opportunity to defend himself against the unfavorable recommendation before the appeal board acted upon it. This was raised in ground 11 of the motion for judgment of acquittal. [R. 80] The trial court held that failure to include the adverse recommendation in the file did not constitute a violation of procedural due process of law. [R. 87]

The Court of Appeals stated that the judgment of the trial court was affirmed "for the reasons set forth by Judge Koscinski in his order denying judgment of acquittal." [R. 99] In the per curiam opinion of the Court of Appeals some of the facts are stated. [R. 98] The court below held that that part of the recommendation of the Department of Justice (that Gonzales be denied the conscientious objector status because he was a late-comer to Jehovah's Witnesses) was not illegal. [R. 98-99] The court relied upon the statement made by Gonzales that others of Jehovah's Witnesses had joined the army and that conscientious objection was an individual choice for each to make. [R. 98] The court found that the Department of Justice recognized Gonzales to be sincere and conscientiously opposed to war, but that he stated that if attacked he "would defend himself and members of his family to the point of taking life." [R. 98]

The court below relied upon the oral testimony of the hearing officer that, while Gonzales was sincere, because of his late conversion there were "other factors" the court based the opinion upon. [R. 99] In one sentence the court states that claiming conscientious objection "shortly before being subject to the draft law" has no connection with



the claim for classification "as a conscientious objector." [R. 99] Yet the court, without explanation, says it bears upon whether Gonzales was "sincere" in making the claim. [R. 99] The court held that the recommendation of the Department of Justice was "merely advisory." [R. 99]

The court below found that failure to give Gonzales notice of the adverse recommendation by the Department of Justice and classifying him without an opportunity to defend himself against the recommendation were not a denial of procedural due process of law. [R. 99]

## SUMMARY OF ARGUMENT

### ONE

**There was no basis in fact for the denial of the conscientious objector status by the appeal board to petitioner; consequently, the final I-A classification is arbitrary and capricious.**

Section 6(j) of the Universal Military Training and Service Act (62 Stat. 604, 612; 65 Stat. 75, 86, 50 U. S. C. App. § 456(j)) is altogether different from the Selective Service Act of 1917 (40 Stat. 76, 78, 50 U. S. C. App. § 201). In the 1940 act (Pub. L. No. 783, 76th Cong., 2d Sess., 54 Stat. 887, 50 U. S. C. App. § 305 (g)) the Congress eliminated the requirement of pacifistic belief. Under present law all that is required is an individual belief in the Supreme Being. It is not necessary to be a member of any church. All that is required is religious training and belief. (*United States v. Everngam*, D. W. Va., 1951, 102 F. Supp. 128, 130-131) The change in the 1948 act eliminated political and philosophical beliefs.—See Senate Report 1268, 80th Cong., 2d Sess., May 12, 1948, accompanying Senate Bill 2655.

The law does not permit comparisons between religious beliefs of conscientious objectors. In determining whether petitioner is a conscientious objector the judicial inquiry is limited to (1) belief in a Supreme Being, (2) belief in obligations higher than those owed to the state, (3) oppo-

sition to combatant and noncombatant service, and (4) no political beliefs.

The historic fair treatment of conscientious objectors in the United States runs back to colonial times. This history was relied upon by Congress in reaching a liberal definition of conscientious objector.—*Girouard v. United States*, 328 U. S. 61, 68-69 (1946).

The undisputed documentary evidence showed that Gonzales had sincere conscientious objections against combatant and noncombatant military service, based on his belief in a Supreme Being involving duties higher than those arising from any human relation. No question of his sincerity is involved. There is no dispute as to the facts appearing in the file. The draft boards did not question his sincerity. The boards merely demurred to his evidence rather than denied it. Nowhere in the file did Gonzales agree to do military service. He at all times opposed it.

The absence of contradictory evidence permits petitioner to invoke *Dickinson v. United States*, 346 U. S. 389, 396-397 (1953).—See *Weaver v. United States*, 8th Cir., 1954, 210 F. 2d 815, 822-823; *Jessen v. United States*, 10th Cir., 1954, 212 F. 2d 897, 899-900; *United States v. Close*, 7th Cir., 1954, 215 F. 2d 439, 441; *Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329, 331-332; *United States v. Hartman*, 2d Cir., 1954, 209 F. 2d 366, 368, 369, 371.

Neither petitioner's willingness to defend himself nor his employment in a civilian defense plant constitutes basis in fact for the denial of the conscientious objector status.—*Annett v. United States*, 10th Cir., 1953, 205 F. 2d 689, 692; *Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329, 331-332; *United States v. Hartman*, 2d Cir., 1954, 209 F. 2d 366; *Jessen v. United States*, 10th Cir., 1954, 212 F. 2d 897, 899-900; *Hinkle v. United States*, 9th Cir., Sept. 24, 1954, — F. 2d — ; *United States v. Wilson*, 7th Cir., 1954, 215 F. 2d 443, 445, 446.

The mere fact that Jehovah's Witnesses permit each individual to make his own determination as to the dictates

of his conscience does not give basis in fact for the denial of the conscientious objector status. While Jehovah's Witnesses have no publications against war there are innumerable statements of belief in respect to the neutrality of Jehovah's Witnesses and their nonparticipation in military service.

There was no exercise by the hearing officer of his right to question the credibility of Gonzales. The fact that there was a hearing in the Department of Justice does not *per se* give rise to the conclusion that the hearing officer disbelieved Gonzales. A speculation that he did not think Gonzales was credible must be rejected for the lack of a memorandum in the file specifically showing such fact.—*Annett v. United States*, 10th Cir., 1953, 205 F. 2d 689, 690-691; *Dickinson v. United States*, 346 U. S. 389, 396, 399 (1953).

The late change from Catholicism to the belief of Jehovah's Witnesses preceded the registration by Gonzales. The law contemplated a late change of religions, to allow conscientious objectors to make their claims even though they are late converts. Gonzales filed his conscientious objector claim in time. This was before he was first classified. Even if he had filed the conscientious objector claim after he had been classified, this would not be untimely. The law contemplates a change of status even after registration and classification.—*Dickinson v. United States*, 346 U. S. 389, 392-393, 395 (1953); *Hull v. Stalter*, 7th Cir., 1945, 151 F. 2d 633, 635; *United States v. Packer*, 2d Cir., 1952, 200 F. 2d 540, 541, reversed on other grounds, 346 U. S. 1 (1953); *United States v. Clark*, W. D. Pa., 1952, 105 F. Supp. 613, 614; *United States v. Vincelli*, 2d Cir., 1954, 215 F. 2d 210, 212-213.

Permission by law to file a conscientious objector form late after a conversion to religious opposition to service prohibits the court below from finding basis in fact for the denial of the conscientious objector status because Gonza-

les quit the Catholic Church and became one of Jehovah's Witnesses shortly before his registration.

## T W O

The hearing officer of the Department of Justice arbitrarily and capriciously recommended against petitioner's claim by rejecting the undisputed evidence that showed he was a conscientious objector to both combatant and noncombatant military service, on the ground that he became one of Jehovah's Witnesses and a conscientious objector too recently and that therefore he was not in good faith a conscientious objector.

The recommendation of the Department of Justice was illegal. The hearing officer found Gonzales to be sincere and an active member of Jehovah's Witnesses, believing in opposition to both combatant and noncombatant military service. The Department of Justice recommended that because Gonzales quit the Catholic Church when he married his wife in 1948 and later became one of Jehovah's Witnesses in 1949 (before he registered) such was basis in fact for the denial of the conscientious objector status. This recommendation was illegal because the change of religions does not *per se* mean that Gonzales was insincere. Gonzales became one of Jehovah's Witnesses and began preaching in December, 1949; he was ordained in February, 1950, and entered the full-time ministry of Jehovah's Witnesses in October of 1950. He was a conscientious objector before January, 1950, the date of his registration. He was a full-time minister before he filed his questionnaire on March 9, 1951.

The recommendation of the Department of Justice was contrary to the regulations of the Selective Service System authorizing a change in status. It was in defiance of the principle announced in *Hull v. Stalter*, 7th Cir., 1945, 151 F. 2d 633, 635; and *Dickinson v. United States*, 346 U. S. 389, 392-393, 395 (1953).

The recommendation of the Department of Justice misinterpreted the facts. It stated that Gonzales became one of Jehovah's Witnesses after he registered in January, 1950. This recommendation defied the record showing that Gonzales began preaching in December of 1949. This was one month before he registered under the law. He was not baptized until one month after he registered. He was active and fully dedicated to serving as a full-time minister of Jehovah's Witnesses long before he filed his classification questionnaire in March of 1951. The recommendation of the Department of Justice is not in accordance with the facts. The switch of Gonzales from Catholicism to the religion of Jehovah's Witnesses after the law was passed was not illegal. It was not basis in fact. The law permits even the late filing of the conscientious objector claim and reopening of the case after the original classification. (*United States v. Vincelli*, 2d Cir., 1954, 215 F. 2d 210, 212-213) If a conscientious objector claim can be filed after classification, then there is no basis in fact in the late conversion of Gonzales, which was before he registered for the draft.

Not one word can be found in the act or the regulations that indicates that the privilege of conscientious objection was confined to long-time conscientious objectors before the passage of the act. The conscientious objector status is like any other claim. It can be made before a board at any time. The recommendation of the Department of Justice (that the late conversion of Gonzales to the beliefs of Jehovah's Witnesses was *per se* evidence of bad faith) is illegal, arbitrary and capricious.

Freedom of religion guarantees freedom to change religions. Congress did not intend to deny this freedom to persons converted to beliefs in conscientious objection. All religions are constantly proselytizing the millions of non-church members and members of other religions. The change of religions is going on constantly in time of peace as well as in time of war. This well-known practice was not

intended by Congress to be basis in fact for the denial of the rights of the convert.

The recommendation of the hearing officer, that Gonzales' failure to show a religious belief of long standing was basis in fact for the denial of the conscientious objector status, is speculative, irrelevant and immaterial. (*Dickinson v. United States*, 346 U. S. 389, 396-397 (1953); *Schuman v. United States*, 9th Cir., 1953, 208 F. 2d 801, 802-803, 805; compare *White v. United States*, 9th Cir., Sept. 14, 1954, — F. 2d —) The recommendation ignores the facts. Gonzales married one of Jehovah's Witnesses in 1948. He quit the Catholic church one year before he registered. He was proselytized by his wife and finally became active one month before he registered. He was a full-time duly ordained minister one year before he filed his Selective Service questionnaire. He therefore stood on the same basis as a matter of fact and law as would a person born into Jehovah's Witnesses. His late activity as one of Jehovah's Witnesses was no basis in fact for the denial of the conscientious objector status. Without a finding that Gonzales was a hypocrite it was illegal, arbitrary and capricious for the Department of Justice to recommend that the conscientious objector status be denied.—*Annett v. United States*, 10th Cir., 1953, 205 F. 2d 689, 691; *Schuman v. United States*, 9th Cir., 1953, 208 F. 2d 801, 805; compare *White v. United States*, 9th Cir., Sept. 14, 1954, 215 F. 2d 782.

The recommendation of the Department of Justice discriminates between a new convert and an old believer in a religious belief with conscientious objections to military service. The law did not intend to discriminate between newcomers and old-timers in a religion.

The scope of review in draft cases is limited. (*Estep v. United States*, 327 U. S. 114 (1946)) This commands strict compliance with the procedural requirements of the act. (*National Labor Relations Board v. Cherry Cotton Mills*, 5th Cir., 1938, 98 F. 2d 444, 446) The Department of Jus-



tice and the appeal board were required to comply strictly with the act and were not permitted to speculate outside the law. (*United States v. Zieber*, 3rd Cir., 1947, 161 F. 2d 90, 92) It is true that the recommendation of the Department of Justice is advisory. It was, however, considered and apparently adopted by the appeal board. That board denied the conscientious objector claim. It classified Gonzales in Class I-A as recommended. The chain of administrative proceedings took on, therefore, a broken link. The cracked link in the chain was the report and recommendation of the Department of Justice, embraced by the appeal board. When a recommendation is made it is presumably followed. (*Clementino v. United States*, 9th Cir., Sept. 27, 1954, — F. 2d — ; *Hinkle v. United States*, 9th Cir., Sept. 24, 1954, — F. 2d — ) Reliance upon the recommendation of the Department of Justice invalidated the appeal board's classification, which became part of the administrative proceedings.—*United States v. Everngam*, D. W. Va., 1951, 102 F. Supp. 128, 131; *United States v. Bouziden*, W. D. Okla., 1952, 108 F. Supp. 395, 397-398; compare *Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329, 330-331; *Annett v. United States*, 10th Cir., 1953, 205 F. 2d 689, 691.

### T H R E E

**The Department of Justice deprived Gonzales of his procedural rights to due process of law by not mailing a copy of the report of the hearing officer and its proposed recommendation to the appeal board to petitioner before the recommendation was mailed to the appeal board and by not giving him an opportunity to rebut the adverse recommendation before the final appeal board classification, contrary to due process of law.**

The Department of Justice recommendation is made pursuant to Section 1626.25 of the regulations. The classification of the appeal board is made in accordance with Section 1626.26. The Department makes the recommenda-



tion and the appeal board acts upon it without giving notice to the registrant of the unfavorable nature of the recommendation. There is nothing in the act or regulations that forbids the giving of notice. Section 1(c) of the act requires that the classification be arrived at by fair and just methods.

It has uniformly been held that a local board classification based upon reports and information of which the registrant has no notice is illegal. Failure by the local board to give notice of the unfavorable evidence received by it and acted upon is a denial of due process of law. —*Brewer v. United States*, 1954, 211 F. 2d 864, 866; *Sheats v. United States*, 10th Cir., 1954, 215 F. 2d 746; *DeGraw v. Toon*, 2d Cir., 1945, 151 F. 2d 778, 779; *United States v. Balogh*, 2d Cir., 1946, 157 F. 2d 939, 943-944, vacated 329 U. S. 692 (1947) and affirmed, 2d Cir., 1947, 160 F. 2d 999.

In *Morgan v. United States*, 304 U. S. 1, 19, this Court held that a person before an administrative tribunal is entitled to have given to him what the Government proposes to recommend to the administrative agency. This Court held that failure to give a party an opportunity to answer the proposed adverse recommendation to the Government without notice is a violation of procedural due process of law. The identical procedure there condemned was employed by the Department of Justice in this case. Since a local board cannot act upon any information or a recommendation received by it without giving the defendant notice, then by force of the same reason the appeal board, which stands in the same shoes as does the local board, may not receive adverse recommendations against the registrant and act upon them without notice. The action of the appeal board and the Department of Justice in this case was a flagrant violation of due process of law. It was a star-chamber procedure prohibited by the fair and just provisions of Section 1(c) of the act and the Fifth Amendment of the United States Constitution.

## A R G U M E N T

### O N E

**There was no basis in fact for the denial of the conscientious objector status by the appeal board to petitioner; consequently, the final I-A classification is arbitrary and capricious.**

Section 6(j) of the Universal Military Training and Service Act, *supra*, page 2 (62 Stat. 604, 612, 65 Stat. 75, 86, 50 U. S. C. App. § 456(j)) is altogether different from the Selective Service Act of 1917 (40 Stat. 76, 78, 50 U. S. C. App. § 201). Section 4 of that act limited the conscientious objector status to members " . . . of any well recognized religious sect or organization at present organized and existing and whose existing creed or principles forbid its members to participate in war in any form and whose religious convictions are against war or participation therein in accordance with the creed or principles of said religious organizations. . . ." This provision above quoted was similar to that appearing in Section 17 of the Act of February 24, 1864 (13 Stat. 6, 9).

Section 5(g) of the Selective Training and Service Act of 1940 omitted completely the requirement of pacifism or membership in a "peace church." The 1940 act provided that a conscientious objector, "who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form," was exempt from participation in combatant training and service.—Pub. L. No. 783, 76th Cong., 2d Sess., 54 Stat. 887, 50 U. S. C. App. § 305 (g).

For a detailed statement of the legislative hearings and the history of the development of the 1940 law relating to conscientious objection, see Sibley and Jacob, *Conscription of Conscience*, Cornell University Press, Ithaca, New York, 1952, pp. 45-52. There is an interesting discussion of the 1917 and the 1940 conscientious objector provisions appearing in an article written by Marcus entitled "Some Aspects of Military Service," 30 MICH. L. REV. (1941) 913, 943-946.

The present law is different from the 1917 act, which limited the protection to the pacifist religions. Both the discussions in Congress and the reports on the 1940 act show that Congress changed the law for conscientious objectors. It let the exemption stand on an individual basis, so long as the person based his objections on belief in the Supreme Being.

Under this present law the objections need not be pacifistic. They are sufficient when based on the Bible. Neither the 1948 act nor the 1951 act made reference to pacifism. Neither act fixed the religious standard of any certain religion as the yardstick. The conscientious objection provision extends even to members of churches whose principles do not oppose war. It is an individual objection.—*United States v. Everngam*, D. W. Va., 1951, 102 F. Supp. 128, 130-131.

The only change that the 1948 act made was to prevent the nonreligious political, philosophical and sociological objectors from claiming the exemption.

Senate Report 1268, 80th Cong., 2d Sess., May 12, 1948, accompanying Senate Bill 2655, provided as follows:

“(j) *Conscientious objectors*.—This section re-enacts substantially the same provisions as were found in subsection 5 (g) of the 1940 act. Exemption extends to anyone who, because of religious training and belief in his relationship to a Supreme Being, is conscientiously opposed to combatant military service or to both combatant and noncombatant military service. (See *United States v. Berman*, 156 F. (2d) 377, certiorari denied, 329 U. S. 795.) Elaborate provision is made for determining claims to exemption on this ground and provision is made for the assignment of persons who object to both combatant and noncombatant military service to work of national importance under the immediate direction of a civilian. The exemption is viewed as a privilege.”

Under the law, whether the path of the objector is through the Bible or through the writings of the Shintoists, Moslems or Buddhists, he is entitled to his exemption. The 1948 and 1951 acts protect him. The law does not prescribe any fixed religious path through any of the writings. It did not to avoid invading religious freedom in violation of the First Amendment. To do so would make the draft boards and the courts a religious hierarchy to determine what is orthodox in conscientious objection. That Congress did not intend.

The Government cannot compare Gonzales' beliefs with the pacifist beliefs of other religions and thus determine whether the beliefs fit the statute. To do this, as suggested by the Government in the courts below, also will convert the Court into a heresy tribunal. To reject religious beliefs on conscientious objection by comparison of Jehovah's Witnesses' beliefs with other religious beliefs is in violation of the "fair and just" provisions of the act and the First Amendment to the Constitution.

All the Court can inquire about is confined to what the act says. The act says that one is a conscientious objector entitled to the benefits of the law if he shows that (1) he believes in the Supreme Being, (2) his belief imposes obligations higher than those owed to the state, (3) he opposes both combatant and noncombatant military service, and (4) his beliefs are not political, sociological or philosophical but are based on belief in God.

A strict construction of the act was not intended by Congress. It had in mind a liberal interpretation of its provision for conscientious objectors to protect the religious objector. Congress knew that objection to war is a part of the religious history of this country. Conscientious objection was recognized by Massachusetts in 1661, by Rhode Island in 1673 and by Pennsylvania in 1757. It became part of the laws of the colonies and states throughout American history. It finally became part of the national fabric during the Civil War and has grown in breadth and

meaning ever since. (Selective Service System, *Conscientious Objection*, Special Monograph No. 11, Vol. I, pp. 29-66, Washington, Government Printing Office, 1950) So strongly was the principle of conscientious objection imbedded in American principles that President Lincoln and his secretary of war thought that conscientious objectors had to be recognized. This is impressed upon us by Special Monograph No. 11, Vol. I, at page 43: "At the end of hostilities Secretary of War Stanton said that President Lincoln and he had 'felt that unless we recognize conscientious religious scruples, we could not expect the blessing of Heaven.'"

As it appears above, the Selective Service System, in Special Monograph No. 11, Vol. I, carries the history far back, even before the American Revolution. (*Ibid.*, pages 29-35) Virginia and Maryland exempted the Quakers from service. (*Ibid.*, page 37) From the Revolutionary War to the Civil War provision for exemption of conscientious objectors appears in the state constitutions.

The well-known governmental sympathy toward the Quakers and others was not ignored by Congress when the act was passed. Congress must have had in mind the historic considerations enumerated by the Supreme Court in *Girouard v. United States*, 328 U. S 61, 68-69. In passing the provisions for conscientious objection to war in all the draft laws Congress had this long history in view. It intended to preserve the freedom of religion and conscience in regard to conscientious objection and it provided a law whereby such freedom could be preserved.

The documentary evidence submitted by the petitioner establishes that he had sincere and deep-seated conscientious objections against combatant and noncombatant military service that were based on his "relation to a Supreme Being involving duties superior to those arising from any human relation." [R. 37, 39, 41-42, 43-49, 51-60, 69-70] This material also showed that his belief was not based on "political, sociological, or philosophical views or a merely per-

sonal code," but that it was based upon his religious training and belief as one of Jehovah's Witnesses, being deep-seated enough to drive him to enter into a covenant with Jehovah and dedicate his life to the ministry.

There is no question whatever on the veracity of the petitioner. The local board and the appeal board accepted his testimony. The local board, the Department of Justice and the appeal board all failed to raise any question as to his veracity. [R. 51-52, 66-68] They merely misinterpreted the evidence. The question is not one of fact but is one of law. The law and the facts irrefutably establish that petitioner is a conscientious objector, opposed to combatant and noncombatant service.

In view of the fact that there is no contradictory evidence in the file disputing petitioner's statements as to his conscientious objections and there is no question of veracity presented, the problem to be determined here by this Court is one of law rather than one of fact. The question to be determined is: was the holding by the appeal board (that the undisputed evidence did not prove petitioner was a conscientious objector opposed to both combatant and noncombatant service) arbitrary, capricious and without basis in fact?

There is absolutely no evidence whatever in the draft board file that petitioner was willing to do military service. All his papers and every document supplied by him staunchly presented the contention that he was conscientiously opposed to participation in both combatant and noncombatant military service. The appeal board, without any justification whatever, held that he was willing to perform military service. Never, at any time, did the petitioner suggest or even imply that he was willing to perform any military service. He at all times contended that he was unwilling to go into the armed forces and do anything as a part of military machinery.

Congress did not intend to confer upon the draft boards arbitrary and capricious powers in the exercise of their



discretion. They have discretion to follow the law when the facts are undisputed. If there is a dispute the boards have the jurisdiction to weigh the testimony. In the case of a denial of the conscientious objector status if there is no dispute in the evidence and the documentary evidence otherwise establishes that the registrant is a conscientious objector, it is the duty of the court to hold that there is no basis in fact. It must conclude that there is an abuse of discretion and that the classification is arbitrary and capricious. It is submitted that such is the case here. The undisputed evidence shows that the petitioner is a conscientious objector, entitled to the I-O classification. The denial of the classification is without basis in fact. The classification of I-A flies in the teeth of the evidence. Such classification is a dishonest one, making it unlawful.—*Johnson v. United States*, 8th Cir., 126 F. 2d 242, 247; *Dickinson v. United States*, 346 U. S. 389, 396-397 (1953).

The undisputed documentary evidence in the file before the appeal board showed that the petitioner was conscientiously opposed to participation in combatant and noncombatant military service. This showing brought him squarely within the statute and the regulations providing for classification as a conscientious objector. This entitled him to exemption from combatant and noncombatant military training and service.

It has been held by many courts of appeals that the rule laid down by this Court in *Dickinson v. United States*, 346 U. S. 389, 396-397, 399 (1953), holding that if there is no contradiction of the documentary evidence showing exemption as a minister there is no basis in fact for the classification, also applies in cases involving claims for classification as conscientious objectors.—*Weaver v. United States*, 8th Cir., 1954, 210 F. 2d 815, 822-823; *Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329, 331-332; *United States v. Hartman*, 2d Cir., 1954, 209 F. 2d 366, 368, 369, 371; *Pine v. United States*, 4th Cir., 1954, 212 F. 2d 93, 96-97; *Jewell v. United States*, 6th Cir., 1953, 208 F. 2d 770, 771-772;



*Schuman v. United States*, 9th Cir., 1953, 208 F. 2d 801, 804-805; *Jessen v. United States*, 10th Cir., 1954, 212 F. 2d 897, 899-900; *United States v. Close*, 7th Cir., 1954, 215 F. 2d 439, 441; *United States v. Wilson*, 7th Cir., 1954, 215 F. 2d 443, 445, 446; *contra United States v. Simmons*, 7th Cir., 1954, 213 F. 2d 901, 903.

In *Jessen v. United States*, 10th Cir., 1954, 212 F. 2d 897, 900, after quoting from *Dickinson v. United States*, 346 U. S. 389 (1953), the court said:

"Here, the uncontroverted evidence supported the registrant's claim that he was opposed to participation in war in any form. There was a complete absence of any impeaching or contradictory evidence. It follows that the classification made by the State Appeal Board was a nullity and that Jessen violated no law in refusing to submit to induction."

The decision of the court below is in direct conflict with the above holdings. In those cases the appellants, like petitioner here, were Jehovah's Witnesses. They showed the same religious belief, the same objection to service and the same religious training. While different speculations were relied upon by the Government, which were discussed and rejected by the courts in those cases, the courts were also called upon to say, on facts identical to the facts in this case, whether there was basis in fact for the denial of the conscientious objector status. For instance, see *Jessen* (10th Cir., 1954, 212 F. 2d 897, 899), where the Tenth Circuit (after following *Taffs v. United States*, 8th Cir., 1953, certiorari denied 347 U. S. 928 (1954)), said: "The remaining question is whether there was any basis in fact for the classification made by the State Appeal Board."

The holdings of other circuits with which the holding of the court below (that there was basis in fact for the denial of the classification) directly conflicts are: *Annett v. United States*, 10th Cir., 1953, 205 F. 2d 689, 692; *United States v. Pekarski*, 2d Cir., 1953, 207 F. 2d 930, 931; *Taffs*

v. *United States*, 8th Cir., 1953, 208 F. 2d 329, 331-332, certiorari denied 347 U. S. 928 (1954); *Jewell v. United States*, 6th Cir., 1953, 208 F. 2d 770, 771-772; *Schuman v. United States*, 9th Cir., 1953, 208 F. 2d 801, 804-805; *United States v. Hartman*, 2d Cir., 1954, 209 F. 2d 366, 368-369, 370-371; *Pine v. United States*, 4th Cir., 1954, 212 F. 2d 93, 96-97; *Jessen v. United States*, 10th Cir., 1954, 212 F. 2d 897, 899-900; *United States v. Close*, 7th Cir., 1954, 215 F. 2d 439, 441; *United States v. Wilson*, 7th Cir., 1954, 215 F. 2d 443, 445, 446. And these cases ought not to be pushed aside on the specious but factitious ground that because the courts in some of these cases discussed the speculation urged on the courts as basis in fact the cases are different. They are not different, because on the question of whether or not there was basis in fact the evidence in each case is identical to the facts in this case and the holdings were opposite to that made by the court below in this case. Such attempted distinction would be a distinction without a difference.

That petitioner believed in a position of strict neutrality and had no objection to defending himself, his ministry and his brothers does not prove that he was not a conscientious objector. It was error, therefore, to conclude that this religious belief deprived the petitioner of the right to claim that there was no basis in fact for the denial of the conscientious objector status by the appeal board. The argument that belief in self-defense deprives one of the right to claim classification as a conscientious objector has been rejected in many cases. (*Annett v. United States*, 10th Cir., 1953, 205 F. 2d 689, 691-692; *United States v. Pekariski*, 2d Cir., 1953, 207 F. 2d 930, 931; *Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329, 331; *United States v. Hartman*, 2d Cir., 1954, 209 F. 2d 366, 370-371; *Jessen v. United States*, 10th Cir., 1954, 212 F. 2d 897, 899; see also *United States v. Hagaman*, 3rd Cir., 1954, 213 F. 2d 86, 89; *United States v. Close*, 7th Cir., 1954, 215 F. 2d 439, 442; *Hinkle v. United States*, 9th Cir., Sept. 24, 1954, — F. 2d —; *United*

*States v. Sage*, D. Nebr., 1954, 118 F. Supp. 33, 36; *United States v. Bortlik*, M. D. Pa., 1954, 122 F. Supp. 225, 227) This is discussed at greater length in the brief in the companion case, *Sicarella v. United States*, No. 250, October Term, 1954, at pp. 44-55.

There is no basis in fact for the classification in this case, because there are no facts that contradict the documentary proof submitted by the petitioner. The facts established in his case show that he is a conscientious objector to both combatant and noncombatant service and, therefore, the classification given is beyond the jurisdiction of the boards.

The undisputed evidence shows that petitioner is sincere in his objections. He is opposed to any form of participation by himself in war. This objection comes from an immovable belief in the Supreme Being. It is not based on sociological, political or philosophical beliefs. It is supported by the direct Word of God, the Bible. It is not a limited objection that he has. He is not willing to join the army as a noncombatant soldier or to go in as a conscientious objector to actual combat service only. He objects to doing anything in the armed forces. He will not be a soldier.

It is said by the courts below that because Gonzales stated that some of Jehovah's Witnesses have gone into the army, therefore not one of Jehovah's Witnesses is entitled to be classified as a conscientious objector. This position taken by the courts is an effort to deny to Jehovah's Witnesses, as a group, classification as conscientious objectors and thereby include the petitioner in such group and cause him to be denied the conscientious objector classification to which he is entitled. This type of judicial process and argument was condemned by the court below in *Niznik v. United States*, 6th Cir., 1950, 184 F. 2d 972, 974. In *Hull v. Stalter*, 7th Cir., 1945, 151 F. 2d 633, 637-638 it was held that each registrant is entitled to be classified according to the facts of his own case. The courts below also say that because each one of Jehovah's Witnesses must decide for

himself whether he wants to make the claim as a conscientious objector this constitutes a basis in fact for the denial of the claim when made by the petitioner. The mere fact that Jehovah's Witnesses permit each one to make a decision for himself and a group determination is not made for each member does not in any way deprive each one of his legal rights under the law. The courts have held that every member of a religious organization that does not have tenets against participation in war (unlike Jehovah's Witnesses) is nevertheless entitled to be classified as a conscientious objector and he may not have his claim denied him because his church does not take such stand.—See *United States v. Everngam*, D. W. Va., 1951, 102 F. Supp. 128, 130-131.

In the court below the Government placed some emphasis upon the fact that Gonzales stated that Jehovah's Witnesses have no official statement as to their views on war. This statement does not authorize the court to hold that Jehovah's Witnesses or Gonzales are not entitled to the conscientious objector status. The argument made by the Government should not, therefore, be accepted here. While the record shows that Jehovah's Witnesses are not pacifists, the Court can take judicial notice that Jehovah's Witnesses have published articles showing their stand of neutrality. These publications contain official statements by Jehovah's Witnesses against their participation in combatant and noncombatant military service. These articles do not take an open, bold and defiant stand against war as the extreme pacifists take. They are not war resisters' publications. They merely state the conscientious objections of Jehovah's Witnesses. These publications have been referred to in *Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329, 331, and *United States v. Hartman*, 2d Cir., 1954, 209 F. 2d 366, 370-371. The fact, therefore, that Gonzales stated that there were no official views of the organization on the subject of conscientious objection to war does not mean that there are not publications on the neutrality of Jeho-

vah's Witnesses.—See the brief for petitioner in the companion case, *Witmer v. United States*, No. 164, October Term, 1954, pp. 28-32.

It was held by the courts below that the willingness of Gonzales to do civilian work in a steel plant constitutes an implied consent on his part to do noncombatant military service. The unreasonableness of this position taken by the courts below is clearly demonstrated by the terms of the act itself. The act provides for civilian work outside the army that may contribute to the national welfare. Should this civilian work be considered equivalent to a consent in private to do noncombatant military service in the armed forces, then it was useless for the Congress to provide for the exemption from such noncombatant army service for persons willing to do alternate civilian work that contributes to the national welfare.

The Court should notice that the appeal board classified Gonzales to make him liable for combatant service, not non-combatant service. Yet the Government below argued that he is willing to do noncombatant service, because of the fact that he works in a steel plant that has defense orders. The argument by the courts below falls on its face. It becomes mere dust to be quickly blown away with one breadth of truth and reason.

Since Congress stated the difference between civilian work and noncombatant military service, then how can the Government argue that there is no difference? Congress has stated the difference. This statement by Congress of the difference does not justify the Government now to argue that because a man is willing to do some work that might have a connection with the defense effort it is equivalent to agreeing to do military service. There cannot be such a connotation placed on the fact in this case. (See *United States v. Wilson*, 7th Cir., 1954, 215 F 2d 443, 446; *Goetz v. United States*, 9th Cir., Oct. 14, 1954, — F. 2d — ; *Franks v. United States*, 9th Cir., Oct. 4, 1954, — F. 2d —.) This point is discussed more extensively in the brief for

petitioner in No. 164, October Term 1954, *Wilmer v. United States*, a companion case to this one, at pp. 40-49 of that brief.

The courts below take the position that the conscientious objector status of petitioner is a question of fact. It is stated that it involved the weighing of the evidence when the board classified the petitioner. It is said that it was for the draft board alone to determine whether petitioner is a conscientious objector and that it is not for the court to say whether in this case there is no basis in fact.

This contention of the respondent would be true if the respondent could point to any part of the record where the statements of petitioner are contradicted or impeached, but there is no place in the record where Gonzales was questioned in his testimony and doubted. Nowhere was anything stated by Gonzales that was disputed. The Government must accept, therefore, what Gonzales said to be true, because it can find no controverting evidence in the file. There was no weighing of the evidence, therefore, to stay the hand of the court, because there was no dispute in the record made before the draft board.—*Dickinson v. United States*, 346 U. S. 389, 396-397, 399 (1953); *Jewell v. United States*, 6th Cir., 1953, 208 F. 2d 770, 771.

The courts below rely upon the report of the hearing officer and the recommendation of the Department of Justice to the appeal board, but there are no contradictory facts appearing in either of these documents. Nowhere in either of them are any facts turned up that in any way dispute the accuracy of the statements made by Gonzales. The documents merely accept what Gonzales says to be true. Both the hearing officer and the Assistant Attorney General, in order to reach a conclusion that Gonzales was not entitled to a conscientious objector status, indulged in speculation. This was done without any factual basis for the conclusion reached.

Since the boards are precluded from indulging in speculation as a basis in fact for the denial of a claim, then



by force of the same reason the recommendations of the Department of Justice, based on speculation or conjecture, are not basis in fact for the denial of the conscientious objector status, even when accepted and relied upon by the appeal board.—*Annett v. United States*, 10th Cir., 1953, 205 F. 2d 689, 691; *Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329, 331; *cf. United States v. Everngam*, D. W. Va., 1951, 102 F. Supp. 128.

The respondent argued below that the hearing officer had the right to observe the demeanor of petitioner. This may be true as a matter of law. It is not true as a matter of fact. The hearing officer found Gonzales to be a sincere member of Jehovah's Witnesses. Nowhere does he state or even infer that Gonzales was shiftY or that his conduct as a witness indicated that he was not believable. Even in a judicial proceeding the jury or the judge (if it is a trial without a jury) may observe witnesses and judge their credibility. The mere fact that the jury or judge has this right does not mean that every witness that appears before the court has been found to be unbelievable. In reviewing the administrative proceedings it is beyond the competency of the courts to speculate about the right of an administrative agent to observe the demeanor of the registrant. This argument was accepted in the case of *Dickinson v. United States*, 9th Cir., 1953, 203 F. 2d 336, by the Court of Appeals for the Ninth Circuit, but it was rejected by this Court.—346 U. S. 389, 396-397 (1953).

Unless and until the administrative records show that there was an exercise of the right to observe the demeanor and that the demeanor of a registrant was found to establish a lack of credibility it cannot be speculated or assumed that the credibility of the registrant was questioned. (See *Annett v. United States*, 10th Cir., 1953, 205 F. 2d 689, 690-691.) The argument of respondent, therefore, on this point is irrelevant and immaterial.

It is said by the courts below that, because Gonzales did not show any interest in Jehovah's Witnesses until after



he married and did not become ordained until after the time of his registration, this may be considered as basis in fact. Emphasis is placed upon his having been reared as a Catholic and his continuing to be a member of the Catholic church until the time of his registration.

The late change from Catholicism to the belief of Jehovah's Witnesses is no basis in fact whatever. This type of argument is rejected by the Court of Appeals for the Ninth Circuit. In *Schuman v. United States*, 1953, 208 F. 2d 801, the registrant did not show he was a conscientious objector until long after he filed his questionnaire. This was much later than when petitioner made this fact known, which was in the questionnaire. In that case Chief Judge Denman cited the sudden conversion of the apostle Paul as proof that a recent convert can be as sincere as one who is reared in the faith.—See the opinion, 208 F. 2d at pp. 802, 804-805. Compare *White v. United States*, 9th Cir., Sept. 14, 1954, 215 F. 2d 782.

The act and the regulations contemplate and permit a change in status after registration and after classification. The act makes mandatory that a registrant inform the local board of any facts that would affect his present status or that would change his classification. (See Section 1625.1 of the Selective Service Regulations.) The fact that these changes are provided for in the regulations rejects the argument that a revelation of the change in such circumstance of being a new convert after registration is basis in fact for the denial of the classification. The argument of the respondent nullifies the spirit of the regulations. It completely cuts the reason out from the regulation above cited providing for a revelation of a change in status after registration. The position of respondent runs counter to *Hull v. Stalter*, 7th Cir., 1945, 151 F. 2d 633, 635.

The courts have held that the late filing of the special form for conscientious objector, even after classification, requires a reopening. It is necessary to allow the reopening to provide for the appeal. An administrative interpre-

tation has been put upon this by the Selective Service System.—See *United States v. Packer*, 2d Cir., 1952, 200 F. 2d 540, 541, reversed on other grounds, 346 U.S. 1 (1953); *United States v. Clark*, W. D. Pa., 1952, 105 F. Supp. 613, 614; *United States v. Vincelli*, 2d Cir., 1954, 215 F. 2d 210, 212-213.

Since the regulations allow the late filing of the conscientious objector form to require a reopening of the classification, then what authority do the courts below have for the holding made, that the conversion of Gonzales at about the time of his registration is basis in fact for the denial of the conscientious objector claim? The holding repeals the act and waters down completely the strength of the regulations authorizing a reopening of the classification. It makes void the statutory right of appeal guaranteed by Section 6(j) of the act. This is argued at greater length under point Two of this brief, *infra*, pp. 41-51. It is submitted that there was no basis in fact whatever for the denial of the conscientious objector status and that the final I-A classification is arbitrary and capricious.

## TWO

**The hearing officer of the Department of Justice arbitrarily and capriciously recommended against petitioner's claim by rejecting the undisputed evidence that showed he was a conscientious objector to both combatant and noncombatant military service, on the ground that he became one of Jehovah's Witnesses and a conscientious objector too recently and that, therefore, he was not in good faith a conscientious objector.**

The report and recommendation from both the hearing officer of the Department of Justice and the Attorney General showed that Gonzales was a sincere and active member of Jehovah's Witnesses. [R. 12-16, 66-68] They agreed that he did not falsify in any of his statements appearing in his conscientious objector form. They held that, except for his affiliation with Jehovah's Witnesses shortly prior to

his registration, his conscientious objector claim was bona fide. [R. 12-16, 66-68]

The undisputed evidence in this case showed that Gonzales was a Catholic at the time he married his wife, who was one of Jehovah's Witnesses in 1948. The evidence showed that she encouraged him to quit the Catholic church and take up the faith of Jehovah's Witnesses. This he did gradually. He studied and became an active minister in the organization. In February, 1950, he dedicated himself formally. However, he began preaching as a minister before that date in December, 1949. In October, 1950, after being a part-time minister for nearly a year, he took up the full-time ministry as a pioneer of Jehovah's Witnesses. He registered with the local board on January 4, 1950. At this time he had been a bona fide worker and active minister for a month or more before he registered. He filed his classification questionnaire with the local board on March 9, 1951. At that time he had been active as a minister of Jehovah's Witnesses for more than a year.

It was the duty and responsibility of the Selective Service System to classify and the Department of Justice to recommend on Gonzales according to his status at the time he filed the questionnaire and not according to his former status before he became one of Jehovah's Witnesses.—*Hull v. Stalter*, 7th Cir., 1945, 151 F. 2d 633, 635; *Dickinson v. United States*, 346 U. S. 389, 392-393, 395 (1953).

The effect of the recommendation of the hearing officer was to make it appear that petitioner did not start preaching or become interested in the work of Jehovah's Witnesses until after he registered. He registered in January, 1950. [R. 34] The record showed activity by Gonzales as an unordained or regular minister of religion before the date of his registration. The record shows that he began preaching in December, 1949. [R. 44, 46] However, the record shows that he was ordained in February of 1950. [R. 53] Gonzales had conscientious objections, therefore, before he reg-

istered and before he was ordained. He was convinced of the beliefs of Jehovah's Witnesses sufficiently to be preaching them as a regular or unordained minister before he registered. The report of the hearing officer did not take these vital and significant facts into account when it was made to the Department of Justice and by the Assistant Attorney General adopted and transmitted to the appeal board. To be fair and just as required by the act it was important that the hearing officer at least give the right interpretation of the true facts, which were that Gonzales had been active as one of Jehovah's Witnesses before he registered and had conscientious objections before he registered. A false impression was therefore conveyed by the hearing officer in his report. This report, when adopted by the Department of Justice in its recommendation to the appeal board (which relied on the report and recommendation), deprived Gonzales of a substantial right. It was not a fair and just report that could be expected from a fair and impartial hearing officer, as required by the act and the regulations.

Late conversion of Gonzales before registration is no worse than making a claim after the filing of the questionnaire and the classification of a registrant. In such case the board is obliged to reopen the classification. See to the contrary *United States v. Vincelli*, 2d Cir., 1954, 215 F. 2d 210, 212-213. This argument ignores the provisions of Section 6(j) of the act. That law allows an appeal from any denial of the conscientious objector claim when made, regardless of the time of making the claim. (50 U. S. C. App. § 456(j), 56 Stat. 83, *supra*, p. 2) Now that Congress has provided for the right of an appeal from the denial of the claim without regard to when the claim is made, to accept the argument of the respondent that the late conversion of Gonzales is basis in fact is also equivalent to saying that a local board is not required to reopen the classification. That would merely mean to deny completely the right of an appeal guaranteed by the statute.—*United States v.*

*Clark*, W. D. Pa., 1952, 105 F. Supp. 613, 614; *United States v. Vincelli*, 2d Cir., 1954, 215 F. 2d 210, 212-213.

Neither the act nor the regulations mention the fact that a late-comer cannot be a conscientious objector. The act did not confine its privileges to conscientious objectors who were conscientious objectors before the act was passed or before hostilities began. The act deals with conscientious objection as it does any other claim for exemption that may arise after the passage of the act after registration and after classification. That status is to be determined according to the facts existing at the time of the final classification of the registrant.

The hearing officer relied upon arbitrary and capricious grounds for denial of petitioner's claim as a conscientious objector. He said that petitioner was formerly a Catholic but quit the Catholic church. This has no relevancy whatever to the claim for classification as a conscientious objector based on the beliefs of Jehovah's Witnesses. The mere fact that petitioner recently came to a knowledge of God's Word as taught by Jehovah's Witnesses is of no consequence. The undisputed evidence showed that he was one of Jehovah's Witnesses and a conscientious objector at the time he filed his questionnaire and at the time of his final classification by the local board on the occasion of his personal appearance. There was no dispute of such contention. There was nothing whatever to dispute in any way the evidence filed by petitioner showing that he was a conscientious objector.

It is a part of the basic fabric of the nation that the people have freedom of religion guaranteed by the First Amendment of the United States Constitution. This constitutional guarantee not only gives freedom of worship in the religion of one's choice but also secures the right to change to another religion. This freedom to shift churches or views is inherent. Congress certainly intended to protect the full freedom. The hearing officer was unauthorized by



Congress and prohibited by the Constitution to penalize petitioner because he changed his religion.

No one questioned the good faith of petitioner in becoming one of Jehovah's Witnesses. His good faith in becoming one of Jehovah's Witnesses is not disputed in the evidence. There is absolutely no evidence whatever that he fictitiously or fraudulently assumed the robe of conscientious objection believed by Jehovah's Witnesses, for the purpose of evading military service. The conscientious objector form, the affidavits of the witnesses and the evidence given before the hearing officer completely corroborated his bona fide beliefs as one of Jehovah's Witnesses.

It is arbitrary and capricious for the hearing officer to reject all the undisputed evidence purely because petitioner was a late-comer to Jehovah's Witnesses. Religions of all denominations are constantly acquiring new converts and losing old worshipers. There is a constant turnover of membership among the various religions. This is going on in time of war as well as in time of peace. Since the practice is not criticized and the change of religions is not evidence of bad faith in time of peace, then by force of the same reason a change of religions from a nonpacifist group to a religion believing in conscientious objection is not proof of evasion. This change cannot be held to be *per se* fraudulent or in bad faith.

Proselyting is going on all the time. The New York Times (Thursday, March 25, 1954) carried an account of a change in religions during the last ten years. It showed that 4,114,366 Roman Catholics have become Protestants and 1,071,897 Protestants have become Catholics during the last decade. There must be something expressed in the act that would compel an interpretation of bad faith as claimed by the Government. The spirit of the act and the history of freedom of religion in this country compels a different construction, especially in the case of conscientious objectors.

The hearing officer's report failed to show that Gonzales was not a sincere and active member of Jehovah's Witnesses. Nowhere in the report of the hearing officer does it appear that Gonzales falsified any of his statements appearing in his conscientious objector form. The hearing officer merely determined that because Gonzales recently took his stand as one of Jehovah's Witnesses he was not entitled to the conscientious objector status.

These findings by the hearing officer are not findings of fact. They are speculative, irrelevant and immaterial. (See *Dickinson v. United States*, 346 U. S. 389, 396-397 (1953); *Schuman v. United States*, 9th Cir., 1953, 208 F. 2d 801, 802-803, 805; compare *White v. United States*, 9th Cir., Sept. 14, 1954, 215 F. 2d 782.) It is apparent, therefore, that the conclusion reached by the hearing officer, that Gonzales was not a conscientious objector, because of the reason of a late change of religion, specified by him, made the report and recommendation illegal, arbitrary and capricious.

The change of religious belief by Gonzales was natural. There was nothing in the change that would indicate any suspicions. The fact that the petitioner entered into the full-time ministry certainly ought to prove his sincerity. Cannot the injustice of the Government's position be shown in this? One of Jehovah's Witnesses born into a family of witnesses may rock along and be a part-time minister. Yet he still may be held to be a sincere conscientious objector. On the other hand and at the same time, a man who evidences his sincerity by extreme sacrifice, by holding a full-time secular job at night and becoming a full-time minister during the day, is held to be insincere. This purely because he was a recent convert. Recent conversion is not something positive. It is not something direct. This is not affirmative evidence in the file. There must be something affirmative, more than mere proof of being a late-comer, that disputes the statements appearing in the file and in papers signed and filed by Gonzales.



The hearing officer's reports and the Department of Justice reports should be scrutinized for facts, not speculations. If it appears that there is nothing affirmatively denying the statements of the registrant, and the recommendation is based on the fact that Gonzales' religious training and belief were not deep-seated, this standing alone is not a contradiction of the proof of sincerity. The recommendation is based largely, if not exclusively, on the proposition that Gonzales has not been long and deeply trained in religion.

One fallacious defense of the report of the hearing officer was made by respondent in the court below. It was that he exercised his right of judging the credibility of the petitioner. The hearing officer did not undertake to say that he disbelieved what Gonzales said. [R. 12-16] At the hearing he made no challenge of the credibility of the petitioner. It cannot be speculated that he disbelieved Gonzales. (*Annett v. United States*, 10th Cir., 1953, 205 F. 2d 689, 691) A draft board or a hearing officer has the right to challenge the believability of a registrant but if he does so he must make a record of the exercise of the right and state expressly that he does not believe the claimant. Failure thus to make an entry that he disbelieved the registrant precludes the Government from arguing it here. *National Labor Relations Board v. Dinion Coil Co.*, 201 F. 2d 484, is therefore not in point.—See also *Weaver v. United States*, 8th Cir., 1954, 210 F. 2d 815.

A case directly in point is *Schuman v. United States*, 9th Cir., 1953, 208 F. 2d 801. (Compare *White v. United States*, 9th Cir., Sept. 14, 1954, 215 F. 2d 782.) Schuman filed the conscientious objector form late. He became one of Jehovah's Witnesses after he filed his classification questionnaire. The facts are stated in the opinion in that case.—See 208 F. 2d, pp. 805-806.

The fact that the record showed that Gonzales was a late-comer to Jehovah's Witnesses did not in any way show that he was any less sincere in his acts and conduct than

one of Jehovah's Witnesses who had been born and reared in the faith or who was one of Jehovah's Witnesses when he registered. The record showed that Gonzales took a stand and course of action that proved genuinely his sincerity.

Why should one who has recently become one of Jehovah's Witnesses and who carries on in the same devout and sincere way as one who has been born and reared in the faith be treated differently? What is the basis for the discrimination? There is none. The absence of some positive evidence that shows the registrant is a faker or is feigning to be a conscientious objector for the sole purpose of evading the draft is then used as an argument that because he is a late-comer this *ipso facto* constitutes basis in fact for the denial of the conscientious objector status. The report and recommendation of the hearing officer and the final recommendation by the Assistant Attorney General were not findings of fact. They refer to no facts or evidence that disputed the testimony given by Gonzales. The conclusions of fact and law made by the hearing officer and the Assistant Attorney General were erroneous and contrary to fact and law. They do not constitute any facts. They may not be relied upon as basis in fact. This is especially true since no facts were referred to by the hearing officer or the Assistant Attorney General that in any way contradicted the testimony of Gonzales.

The rule of *Dickinson v. United States*, 346 U. S. 389, 396-397 (1953), applies here. This rule also rejects the conclusion of the hearing officer of the Department of Justice and the report of the Assistant Attorney General in the same way that it also rejects the final I-A classification by the appeal board. Neither of these officers is authorized to speculate and guess or draw inferences contrary to the undisputed evidence.—*Dickinson v. United States*, 346 U. S. 389 (1953); see also *Schuman v. United States*, 9th Cir., 1953, 208 F. 2d 801, 802, 805-806.

Since the hearing officer and the Assistant Attorney General cannot speculate, then their speculations are unauthorized and cannot be relied upon by this Court as basis in fact for the denial of the conscientious objector status. It should be remembered that registrants are authorized to change their status after the filing of their classification questionnaires. There was a change of the status of the registrant in *Dickinson v. United States*, 346 U. S. 389, 392-393, 395 (1953). This was held not to be any basis in fact for the denial of the classification. Section 1625.1(a) of the Selective Service Regulations provides that "no classification is permanent." Section 1625.2 provides for the reopening of the classification when there has been a change in the status of the registrant, following his classification. These regulations were interpreted by the court in *Hull v. Stalter*, 7th Cir., 1945, 151 F. 2d 633, 635, to mean that a registrant must have his status determined according to the time of the final classification rather than his status at the time of his registration or at the time of his first classification. —See also *Brown v. United States*, 9th Cir., Oct. 4, 1954, —F. 2d—.

The scope of review in Selective Service cases as far as the classification is concerned is limited and restricted. (*Estep v. United States*, 327 U. S. 114, 121-122 (1946)) In cases where the review is restricted there must be a strict compliance with the requirements of procedural due process by the administrative agency. (*N. L. R. B. v. Cherry Cotton Mills*, 5th Cir., 1938, 98 F. 2d 444, 446) For the final order to be valid the local board must strictly comply with the procedural requirements.—*Ver Mehren v. Sirmyer*, 8th Cir., 1929, 36 F. 2d 876, 881; *United States v. Zieber*, 3rd Cir., 1947, 161 F. 2d 90, 92; *Ex parte Fabiani*, E. D. Pa., 1952, 105 F. Supp. 139, 147-148; *United States v. Graham*, N. D. N. Y., 1952, 108 F. Supp. 794, 797; *Bejelis v. United States*, 6th Cir., 1953, 206 F. 2d 354, 358.

The report of the hearing officer was adopted by the Department of Justice and forwarded to the appeal board

with a recommendation that it be followed. The appeal board followed the recommendation. While the recommendation was only advisory, the fact is that it was accepted and acted upon then by the appeal board. The appeal board concurred in the conclusions reached by the hearing officer. It gave petitioner a I-A classification and denied his conscientious objector status. This action on the part of the appeal board prevents the advisory recommendation of the Department of Justice from being harmless error.—*United States v. Everngam*, D. W. Va., 1951, 102 F. Supp. 128, 131; *Goetz v. United States*, 9th Cir., Oct. 14, 1954, — F. 2d —; *Hinkle v. United States*, 9th Cir., Sept. 24, 1954, — F. 2d —; *Clementino v. United States*, 9th Cir., Sept. 27, 1954, — F. 2d —.

A chain is no stronger than its weakest link. The recommendation of the Department of Justice and its acceptance by the appeal board become a link in the chain. Since it is one of the links of the chain, its strength must be tested. (*United States v. Romano*, S. D. N. Y., 1952, 103 F. Supp. 597, 600-601) The illegal recommendation by the hearing officer and the Department of Justice to the appeal board produces a break in the link and makes the entire Selective Service chain useless, void and of no force and effect. In *Kessler v. Strecker*, 307 U. S. 22, 34 (1939), the Court held that if one of the elements is lacking the "proceeding is void and must be set aside." Acceptance of the recommendation of the Department of Justice that has been made up without producing the FBI report to the registrant in the proper time and manner makes the proceedings illegal, notwithstanding the fact that the recommendation is only advisory. The embracing of the report and recommendation by the appeal board jaundiced and killed the validity of the proceedings.—*Hinkle v. United States*, 9th Cir., Sept. 24, 1954, — F. 2d —; *Clementino v. United States*, 9th Cir., Sept. 27, 1954, — F. 2d —.

This view of the reliance upon the recommendation of the Department of Justice making the report of the hearing

officer and the recommendation, a vital link in the administrative chain is supported by *Hinkle v. United States*, 9th Cir., Sept. 24, 1954, — F. 2d —; *United States v. Everngam*, D. W. Va., 1951, 102 F. Supp. 128, 130, 131; see also *Goetz v. United States*, 9th Cir., Oct. 14, 1954, — F. 2d —; *United States v. Bouziden*, W. D. Okla., 1952, 108 F. Supp. 395, 397-398; compare *Taffs v. United States*, 8th Cir., 1953, 208 F. 2d 329, 330-331.

The report of the hearing officer and the recommendation of the hearing officer to find against petitioner on grounds outside the law are condemned by *Reel v. Badt*, 2d Cir., 1944, 141 F. 2d 845, 847. In that case the court said: "In other words he reached a conclusion as a matter of law which was directly opposed to our decision in *U. S. v. Kauten*, 2 Cir., 133 F. 2d 703."—See also *Phillips v. Downer*, 2d Cir., 1943, 135 F. 2d 521, 525-526.

It is respectfully submitted, therefore, that the recommendation by the hearing officer and the Department of Justice to the appeal board is illegal, arbitrary and capricious, and jaundiced and destroyed the appeal board classification upon which the order to report was based.

### T H R E E

**The Department of Justice deprived Gonzales of his procedural rights to due process of law by not mailing a copy of the report of the hearing officer and its proposed recommendation to the appeal board to petitioner before the recommendation was mailed to the appeal board, and by not giving him an opportunity to rebut the adverse recommendation before the final appeal board classification, contrary to due process of law.**

In carrying out the conscientious objector procedure of Section 6(j) of the Universal Military Training and Service Act it has always been (and still is) the policy of the Department of Justice not to give an opportunity to the registrant to answer an unfavorable recommendation. It



sends its recommendation to the appeal board without notice to the conscientious objector. (Sections 1626.25 and 1626.26 of the regulations, *supra*, pp. 4-7) The appeal board acts on the recommendation without first notifying the registrant. It does not give him a chance to answer an unfavorable recommendation made by the Department of Justice. These acts of the Department of Justice and the appeal boards in not giving notice are not commanded by the regulations and violate the act and the due-process clause of the Fifth Amendment.

The act says that classifications must be fair and just. (Section 1(c), *supra*, p. 2) The Fifth Amendment guarantees due process of law. When the departmental recommendation is adverse and is acted upon by the appeal board to deny his claim for classification as a conscientious objector it is neither fair and just nor in accordance with due process.

It seems, therefore, that the procedure followed by the Department of Justice and the Selective Service System in all conscientious objector cases handled by the Department of Justice is invalid. The registrant should have the right to answer the unfair report and recommendation before the appeal board. Since he does not have notice he is not given a full and fair hearing before the appeal board. The recommendation is made available to the registrant after the appeal board has denied his conscientious objector claim, classified him and returned the file to the local board. After he has lost the appeal it is too late for the registrant to have notice or to see the adverse recommendation. He must have notice and see it in time to protect himself before the appeal board. Since the adverse recommendation is considered without notice to the registrant and is followed, there is a denial of due process in violation of the act and the Fifth Amendment.

The court below held that the procedural rights of petitioner were not violated when the appeal board considered and acted upon the adverse recommendation of the Depart-

ment of Justice. [R. 100] It was against the conscientious objector claim of petitioner. It was considered by the appeal board without giving him an opportunity to answer it before that appeal board made the final classification. This holding is out of harmony with the principle stated by United States Court of Appeals for the Fourth Circuit in *Brewer v. United States*, 1954, 211 F. 2d 864, 866. Compare *Sheats v. United States*, 10th Cir., 1954, 215 F. 2d 746. The court held that consideration by the appeal board of the secret FBI investigative report, inadvertently sent to the board by the Department of Justice, deprived him of due process of law. The court found that the registrant was denied the right to answer the FBI report before the appeal board. The court, however, said erroneously that a registrant was given the right by the regulations to see and answer the recommendation of the Department of Justice to the appeal board. Contrary to that statement are the regulations that do not grant the right. The holding by the court below on this point is also in direct conflict with *DeGraw v. Toon*, 2d Cir., 1945, 151 F. 2d 778, 779; and *United States v. Balogh*, 2d Cir., 1946, 157 F. 2d 939, 943-944, vacated, 329 U. S. 692 (1947) and affirmed, 2d Cir., 1947, 160 F. 2d 999.

The holding by the court below [R. 99] (that action on secret reports of a trial examiner or agency hearing officer without notice and an opportunity to reply before final decision is made by the administrative agency is not a violation of due process of law) conflicts directly with *Kwock Jan Fat v. White*, 253 U. S. 454, 459, 463, 464 (1920); *Morgan v. United States*, 304 U. S. 1, 22, 23 (1938); *Interstate Commerce Commission v. Louisville & Nashville R. R. Co.*, 227 U. S. 88, 91-92, 93 (1913); *United States v. Abilene & S. Ry. Co.*, 265 U. S. 274, 290 (1924); *Oregon R. R. & N. Co. v. Fairchild*, 224 U. S. 510, 524 (1912).

In the case of *Morgan v. United States*, 304 U. S. 1, 19 (1938), the Court said: "Those who are brought into contest with the Government in a quasi-judicial proceeding



aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command. No such reasonable opportunity was accorded appellants." Identically the same secret proposal was made here by the Department of Justice, and the appeal board acted upon it in this case without the knowledge of the petitioner in time to protect himself. This star-chamber procedure prescribed by the regulations is a denial of due process of law. It conflicts with the "fair and just" provisions of Section 1(c) of the act and the Fifth Amendment to the United States Constitution.

It is submitted, therefore, that petitioner was denied procedural due process of law when he was tried behind his back in the appeal board and denied the right to rebut the adverse recommendation before the final I-A classification by the appeal board, contrary to due process of law.

### CONCLUSION

This Court should hold that there was no basis in fact for the denial of the conscientious objector classification. It should be declared, therefore, that the final I-A classification by the appeal board was arbitrary and capricious. This Court should hold that the facts that Gonzales was a late-comer to Jehovah's Witnesses, that others of Jehovah's Witnesses went into the army and that each individual may determine whether or not he is a conscientious objector or to do defense work, all are no basis in fact for the denial of the conscientious objector status, in the face of the finding that Gonzales was sincere and in the lack of any affirmative evidence that he was not conscientious. It should also be held that the recommendation of the Department of Justice (that Gonzales be denied the conscientious objector status because of his late conversion as one of Jehovah's Witnesses) is illegal and no basis for the denial of the conscientious objector status on the record in this

case. It should also be declared that the petitioner was deprived of procedural due process of law when the Department of Justice and the appeal board failed to give him notice and an opportunity to rebut the adverse recommendation of the Department of Justice before the final I-A classification was made by the appeal board.

It is submitted, therefore, that the judgment of the courts below should be reversed and the cause remanded to the district court with directions that the motion for judgment of acquittal be sustained and the petitioner be discharged.

Respectfully submitted,

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November, 1954.

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# Supreme Court of the United States

OCTOBER TERM, 1954

**No. 69**

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**JOE VALDEZ GONZALES,**

*Petitioner*

*v.*

**UNITED STATES OF AMERICA,**

*Respondent*

---

ON PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

---

## REPLY BRIEF FOR PETITIONER

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# **Supreme Court of the United States**

OCTOBER TERM, 1954

**No. 69** ,

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**JOE VALDEZ GONZALES,**

*Petitioner*

*v.*

**UNITED STATES OF AMERICA,**

*Respondent*

---

ON PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

---

## **REPLY BRIEF FOR PETITIONER**

---

MAY IT PLEASE THE COURT :

The points that petitioner deems it necessary to answer shall be considered in the order in which they occur in the brief of the respondent.

### **I.**

The questions presented are unduly restricted by the respondent. (See page 2 of its brief.) The respondent fails to recognize that question III and point Two (pages 8, 22

and 41) of petitioner's brief are not a part of the basis-in-fact question. The question involves a violation of procedural due process regardless of whether the classification is held to be supported by basis in fact. There nevertheless remains the procedural due process problem presented by the illegal recommendation of the Department of Justice.

## II.

Respondent (pages 4 and 5, footnote 4) attempts to color the facts to show inconsistency in statements. There is no disagreement between the statements by petitioner and the affidavit signed by twenty-two persons that he had been "performing other duties required of ministers of the Gospel" for over a year and a half before April 8, 1951. [R. 48] Petitioner states in his conscientious objector form that he "started out actively in the service of God" during December of 1949. [R. 44] He was here talking about his duties in the field ministry beginning in December, 1949. He was attending meetings and taking part in the ministry school of Jehovah's Witnesses, preparing for the field ministry, beginning in October, 1949. [R. 48] He was not ordained until February, 1950. Therefore, there is no inconsistency between the statements of petitioner and those of the twenty-two persons signing the affidavit. In any event, any ambiguity relates to the ministerial claim. It has no relevance to the conscientious objector status. It should be remembered that petitioner testified extensively before the local board and he offered additional evidence. The board told him they did not doubt what he said but accepted it as true since he made the statements under oath. [R. 59] In its recommendation the Department of Justice did not rely upon any unexplained difference in the time of beginning his ministerial duty. [R. 15, 67-68]

### III.

Respondent mentions petitioner's performing 40 hours' secular work, thereby implying that he did not tell the truth when he said that this did not interfere with his full-time preaching activity (requiring a minimum of 100 hours per month). (See respondent's brief, page 6.) The local board recognized that petitioner was telling the truth on this point. He told the board that such secular work did not interfere with his ministry because he was working a shift beginning at midnight and that he performed his ministry during the daytime. [R. 56]

### IV.

Respondent places emphasis (page 7, respondent's brief) on Gonzales' stating that his conscientious objection was "based entirely on his personal interpretation of the Bible." While he reached his conclusions by personal study and interpretation, he got his religious training and belief with Jehovah's Witnesses. This makes immaterial the point asserted here.—*United States v. Everngam*, D. W. Va., 1951, 102 F. Supp. 128.

### V.

Respondent attempts to make inconsistencies out of Gonzales' statement that there were no publications by Jehovah's Witnesses relating directly to war. This has been answered on pages 36-37 of petitioner's main brief. Petitioner was here merely stating what the president of the legal governing body of Jehovah's Witnesses had stated.—See brief for the United States in *Sicurella v. United States*, No. 250, October Term, 1954, at page 22, footnote.

### VI.

Respondent refers to the summary made by the local board (respondent's brief, pages 8-9). This summary should be read along with the stenographic report of the personal

appearance appearing in the record. [R. 52-60] It is to be observed in the memorandum that the local board failed to indicate that it disbelieved the petitioner. It is necessary for the local board to make a memorandum in the event it disbelieves the registrant. (*Williams v. United States*, 5th Cir., 1954, 216 F. 2d 350, 351; *Ashauer v. United States*, 9th Cir., No. 14,304, Dec. 21, 1954, — F. 2d —; *Pitts v. United States*, 9th Cir., No. 14,164, Dec. 7, 1954, — F. 2d —) The local board stated concerning the hearing that it did not doubt any of the testimony of petitioner given at the hearing. [R. 59]

## VII.

Respondent gives only part of the testimony of the hearing officer, the Government's witness (page 12, respondent's brief). Other parts of the hearing officer's testimony show that he based the denial solely on Gonzales' being a recent convert to Jehovah's Witnesses, since Gonzales had previously been a Catholic. [R. 13, 15, 19-20] The use of the vague and indefinite testimony, full of opinion, is to be limited by the hearing officer's report. [R. 15]

## VIII.

Respondent (page 16 of its brief) challenges the applicability of the doctrine of this Court in *Dickinson v. United States*, 346 U. S. 389 (1953), to conscientious objector cases. This is established by the decisions cited on pages 32-33 of the petitioner's main brief. To this list should be added *Ashauer v. United States*, 9th Cir., No. 14,304, Dec. 21, 1954, — F. 2d —; and *Pitts v. United States*, 9th Cir., No. 14,164, Dec. 7, 1954, — F. 2d —.

## IX.

It is stated by respondent that the "objective tests for the ministerial exemption" cannot be applied to the conscientious objector status. (See page 16, respondent's brief.)

This is answered in the main brief for petitioner in *Simmons v. United States*, No. 251, October Term, 1954, at pages 34-35.

#### X.

Respondent argues (pp. 16-17) that there is a different court procedure to be followed in applying the basis-in-fact rule in conscientious objector cases from that in cases involving ministerial status. This is answered on page 32 of the brief for petitioner in *Simmons v. United States*, No. 251, October Term, 1954.

#### XI.

Respondent says that the statements appearing in Selective Service forms are self-serving and are not evidentiary, but need to be corroborated. (See respondent's brief, pages 17-18.) It should be remembered that the act and the regulations make statements appearing in forms, if false, subject to perjury prosecution. This establishes that they are evidentiary and not mere claims unsupported by proof. The Department of Justice relies upon the answers appearing in the conscientious objector forms as evidence for the denial of the status. If the forms can be used as evidence for denial of the status, they can be employed in support of the conscientious objector status.

#### XII.

It is stated that it is necessary for petitioner to provide corroboration of his sincerity (page 18). This is answered in the main brief for petitioner at the bottom of page 46.

#### XIII.

The respondent underscores (page 18 of its brief) that part of the statute referring to "character and good faith of the objections of the person concerned." What has been said on the use of the word "conscientiously" applies also

to the words "good faith."—See the main brief for petitioner in *Sicurella v. United States*, No. 250, October Term, 1954, pages 41-42.

#### XIV.

Because of "the discrepancy" in the claim of Gonzales respondent states that petitioner's behavior reflects his insincerity (pages 18-19). It is argued that petitioner became of draft age on July 22, 1949, and that he was raised a Catholic and remained a Catholic until he married. Then he became one of Jehovah's Witnesses and became active as a minister. (See respondent's brief at pages 13, 19-20.) The previous religion of a registrant is immaterial. Does respondent mean to say that every man of draft age who changes his religion and claims to be a conscientious objector is per se a liar, a crook and a draft evader? Apparently so from the argument respondent makes here. Certainly Congress had in mind that an honest person with the utmost of good faith could change his religion even while subject to the draft. Apparently respondent implies that every man who marries a woman that is of a conscientious objector faith and embraces her religion while of draft age is *ipso facto* a draft evader. Surely this court will keep in mind that petitioner became one of Jehovah's Witnesses while the draft law was in the "deep freeze." This expression was used by Judge McGranery in *In re Fabiani*, E. D. Pa., 1952, 105 F. Supp. 139. He found no evasion in enrollment in a medical school there. If the "deep freeze" protected a man enrolled in a medical school, then why should it not protect one of Jehovah's Witnesses? At the time Gonzales became one of Jehovah's Witnesses there was no imminence of military liability. He trained for the ministry beginning in October, 1949, became active in December, 1949, and was ordained in February, 1950. All of this took place before June 24, 1950, the date of the beginning of the Korean War. The draft law was still in the "deep freeze." Inductions resumed in August, 1950. So how

can the Government consistently argue *prima facie* evasion from such facts when there was no draft in process?

## XV.

Respondent states (page 20 of its brief) that petitioner went to work for a steel company. This point was not relied upon by the Department of Justice in its recommendation. It was referred to by the trial court but was wholly irrelevant to the conscientious objector claim.—See the main brief for petitioner in *Witmer v. United States*, No. 164, October Term, 1954, pages 40-48. See also the explanation given by petitioner himself about this. [R. 56-58]

## XVI.

The respondent argues extensively about the pioneer ministerial activity of the petitioner. (See pages 20-23 of its brief.) His appointment as such is criticized. The nature of the evidence supporting his ministerial status is condemned. Yet on this point his proof is as strong as—if not stronger than—that in *Dickinson v. United States*, 346 U. S. 389 (1953), except for the fact that Gonzales devoted 40 hours a week to secular work (performed at nighttime). This entire argument made by the Government against petitioner's ministerial status, however, is wholly irrelevant and immaterial. (*Pine v. United States*, 4th Cir., 1954, 212 F. 2d 93) The ministerial question is not at issue in this case. If it were in issue, then what is said about the motive of Gonzales in taking up the ministry is wholly irrelevant and immaterial, according to the opinion of this Court in *Dickinson v. United States*, 346 U. S. 389, 392-393 (footnote 5). If this argument is immaterial on the ministerial claim, then by force of the same argument all this entire argument concerning the evidence offered by petitioner to the board regarding his ministerial status is also immaterial in considering the conscientious objector claim.

It was unnecessary for Gonzales to be a minister in



order to claim conscientious objection. (*United States v. Dal Santo*, 7th Cir., 1953, 205 F. 2d 429; cert. denied 346 U. S. 858 (1953)) Judge Picard's reasoning in an oral opinion in *United States v. Kobil*, No. 32,390, Eastern District of Michigan, Southern Division, September 13, 1951, applies here:

"Then his case came before a hearing officer, Mr. Caniff, and here is what he says—and to me this is significant. He concludes:

"The fact that registrant originally based his claim of exemption on the ground that he was a minister of the gospel and afterwards changed his reasons for exemption maintaining he did not consider himself a minister as his faith was not strong enough clearly indicates his uncertainty and doubts about his religious beliefs."

"That isn't true at all. Because a man doesn't feel that he is a minister doesn't mean he doesn't believe in that faith. As I told counsel before you came in, I have known people who have entered the seminary to become a Catholic Priest, and after they have been there they say, 'Wait a minute; I don't belong here as a Catholic Priest,' and they have left the seminary and went out and they are good Catholics. I suppose you have found that out about young men you know, Presbyterians or Lutherans, everybody else. They might have at one time said, 'I am a minister,' or 'I want to be a minister,' and then changed their mind. That doesn't change a man's faith at all. Sometimes it shows an increased faith instead of a lack of faith.

"This young man couldn't qualify as a minister under the regulations of Congress.

"He could qualify as a minister in the Jehovah's Witnesses, but that isn't enough.

"I have searched this record. I have asked counsel to point out to me one thing that the board had before it besides its natural prejudices and its capricious manner—which I can understand, too, being of the type I am; it is very difficult for me to tell you what I think you ought to do and must do.

"But it was absolutely without any basis in fact and there was no right for this draft board to classify him as I-A. What they should have done, in my opinion, is to have made further inquiry that gave them that right. There is nothing I have here to show and nothing they have that shows it if they did.

"He is a conscientious objector. The worst he should have gotten from his angle was to have been classified for non-combatant service as a conscientious objector. If he was a conscientious objector, no matter what they found, they could have classified him as a conscientious objector and could have classified him for non-combatant service."

## XVII.

Because of the extensive argument made about petitioner's ministerial status it is, nevertheless, necessary to answer some of the points made by the respondent in its brief because of inaccuracies appearing in such argument. It is stated that petitioner was not active in his religion until December, 1949. The affidavit of twenty-two persons showing active study before then appears in the record. [R. 48]

## XVIII.

Respondent argues (footnote, page 22) that the Department of Justice found petitioner not to be sincere and in good faith. The Department of Justice failed to specify

that it disbelieved petitioner or expressly that he was not acting in good faith. In view of the finding by the hearing officer and the absence of anything explicit to the contrary it must be assumed that the Department of Justice did not challenge his sincerity. (*Williams v. United States*, 5th Cir., 1954, 216 F. 2d 350; *Ashauer v. United States*, 9th Cir., No. 14,304, Dec. 21, 1954, — F. 2d —; *Pitts v. United States*, 9th Cir., No. 14,164, Dec. 7, 1954, — F. 2d —) It should be remembered that the local board stated that it did not disbelieve Gonzales. "Since you made these statements under oath, we do not doubt it." [R. 59]

### XIX.

The testimony of the hearing officer (relied upon in footnote 14, page 23, respondent's brief) is irrelevant and immaterial to the basis-in-fact question. The Court must determine the question from the draft board record and not from the testimony that the hearing officer gave in explanation of his recommendation.—*Pine v. United States*, 4th Cir., 1954, 212 F. 2d 93; *Cox v. United States*, 332 U. S. 442 (1947).

### XX.

It is said that Gonzales changed his religion and that this is not to be considered as an "abstract proposition." With this petitioner agrees but, in order to spell bad faith there must be some other evidence of a true and positive nature to color the change of religion with bad faith. (*Schuman v. United States*, 9th Cir., 1953, 208 F. 2d 801) Although this decision was said to be dictum in *White v. United States*, 9th Cir., Sept. 14, 1954, 215 F. 2d 782 (pending on petition for certiorari, No. 390, October Term, 1954), the Court of Appeals for the Ninth Circuit later unanimously relied upon it to support a conclusion that the denial of the conscientious objector status was without basis in

fact.—*Ashauer v. United States*, No. 14,304, Dec. 21, 1954,  
— F. 2d —.

## XXI.

Respondent states (page 24) that Gonzales exaggerated, stretched the point and misrepresented his ministry back to a time before he was assigned to a unit. This statement is itself a gross exaggeration. There were only two months difference from the time when Gonzales was attending the ministry school and preaching student sermons from the pulpit to the time when he became a regular, unordained minister. This attitude of the respondent is quibbling over the ministerial status of the petitioner, which has no relevance here. It should be remembered that neither the local board nor the Department of Justice challenged his sincerity or truthfulness. Indeed, his sincerity was admitted by the local board; yet the Government speculates for the first time against Gonzales. Since the local board and the Department of Justice did not rely upon this argument it comes at too late a time for respondent to rely upon it now.

## XXII.

The old argument about Gonzales' working in a defense plant (which was not even relied upon by the Department of Justice before the appeal board) is made (pages 24-25, respondent's brief). For the answer to that specious and factitious argument of the Government (quoting from petitioner's testimony) the Court is referred to the main brief for petitioner in *Witmer v. United States*, No. 164, October Term, 1954, pages 40-48.

## XXIII.

It is suggested (footnote 16, page 25) that because Gonzales was willing to assist a wounded person he was eligible for the I-A-O classification. He stated that he would not

assist people "injured in battle," which definitely shows that he was not willing to take on noncombatant military service.

#### XXIV.

It is said that petitioner was properly denied the conscientious objector status because the law did not cover his type of religious belief (footnote 17, page 25). This is fully answered in the reply brief for petitioner in *Sicurella v. United States*, No. 250, October Term, 1954, at pages 15-33.

#### XXV.

It is argued that it was necessary for Gonzales to have more corroboration. Respondent states that he had "no real corroborating evidence." (See respondent's brief, page 26.) Since neither the local board nor the Department of Justice nor the appeal board called for more corroborating evidence it is entirely out of place for the Government to argue this point at this late date as basis in fact.

#### XXVI.

An invalid argument is made. It is said (page 26) that the two affidavits tended only to support "his ministry claim and do not relate to his" conscientious objector claim. Local Board Memorandum No. 41, issued November 30, 1951 (quoted from at pages 29-30 of the petitioner's main brief in *Sicurella v. United States*, No. 250, October Term, 1954), shows that it is unnecessary to have all the proof in the conscientious objector claim. If the proof appears in statements establishing the ministerial claim then, according to local board practice, it was the responsibility of the local board to consider these statements insofar as they relate to the conscientious objector claim. What the respondent is attempting to do is to regard petitioner as though he were a litigant represented by counsel before the local board, contrary to *Berman v. Craig*, 3rd Cir., 1953, 207 F. 2d 888, 891.

## XXVII.

In footnote 20 (page 27) it is stated that petitioner apparently is not cognizant of the change made in the regulations requiring that the hearing officer's report no longer be transmitted to the appeal board. The amended regulation (dated June 18, 1952, E. O. 10363, 17 F. R. 5456) was issued over two months after the draft board file of Gonzales was forwarded to the appeal board. [R. 40] It was also made twelve days after the appeal board referred the file to the Department of Justice for the appropriate investigation and inquiry. [R. 41, 64-66] The new regulation, therefore, was not in effect and did not control the procedure to be followed in this case. It was erroneous for the Department of Justice not to forward the hearing officer's report to the appeal board because the old regulation appearing on pages 6-7 of petitioner's main brief was in effect and controlled the procedure to be followed upon his appeal at the time the appeal was taken and the papers were received by the Department of Justice.

But if it be assumed that the new regulation was in effect and applies to the procedure to be followed in Gonzales' appeal, then the regulation is a nullity because it is contrary to the statute. There had been outstanding for over ten years the old regulation that had been approved by Congress in reenacting the 1948 Act and the 1951 Act, called the Universal Military Training and Service Act. What was said by the court in *Sterrett v. United States*, 9th Cir., 1954, 216 F. 2d 659, 664-665, applies here. In that case another part of this same Executive Order was declared invalid by the Ninth Circuit. It was, therefore, the responsibility of the Department of Justice to forward to the appeal board the report of the hearing officer of the Department of Justice, notwithstanding the new regulation.

## XXVIII.

Respondent says that there is no statutory authority for the procedural step demanded by petitioner (that he be notified of the adverse recommendation of the Department of Justice and given an opportunity to answer it before the appeal board). (See respondent's brief, page 28.) The statutory authority for this procedural requirement is the "fair and just" provision of the act (50 U. S. C. App. § 451(c) page 2 of petitioner's main brief).

## XXIX.

It is argued that *United States v. Nugent*, 346 U. S. 1 (1953), is applicable. That decision does not apply here. All that was held there was that the giving of a summary instead of showing the FBI report was sufficient to satisfy the requirements of procedural due process of law. That case did not deal with the subject of failing to give notice. The very minimum requirement of procedural due process of law is that a registrant be notified. The *Nugent* decision, *supra*, is authority for only the holding made. It did not touch upon the issue involved here.

Should the Court consider that *United States v. Nugent*, 346 U. S. 1 (1953), is applicable, then this Court is requested to reconsider and overrule *Nugent, supra*, because it is in conflict with *Estep v. United States*, 327 U. S. 114 (1946), which requires that the rule of law in deportation cases be applied. Respondent is arguing for a lower degree of due process than is applied in deportation cases. It is said that *Nugent, supra*, and the cases there cited support the respondent. If so, now is the time to reconsider and overrule *Nugent*, because it conflicts with all the cases cited on page 53 of petitioner's main brief.

## XXX.

It should be remembered that the scope of review in Selective Service cases is restricted. This narrow review



makes imperative strict compliance with procedural due process of law. (See page 49 of petitioner's main brief.)

It has been held in many cases that the failure to give notice of any action taken affecting a registrant's rights is a violation of procedural due process of law. See what Judge Learned Hand said in *United States v. Balogh*, 2d Cir., 1946, 157 F. 2d 939, 943-944 (vacated 329 U. S. 692 (1947); affirmed 160 F. 2d 999), where the registrant was not given an opportunity to answer the recommendation of a theological panel. The holding of the court below is in direct conflict on this point with *Eagles v. Samuels*, 329 U. S. 304, 312-314 (1946); compare also *Degraw v. Toon*, 2d Cir., 1945, 151 F. 2d 778; and *Brewer v. United States*, 4th Cir., 1954, 211 F. 2d 864.

The courts have held without any disagreement that failure to give notice to a registrant of the sending of his file to the appeal board that deprived him of the right to reply and argue against the classification of the local board was a denial of procedural due process of law.—*United States v. Fry*, 2d Cir., 1953, 203 F. 2d 638; *United States v. Stiles*, 3rd Cir., 1948, 169 F. 2d 455; compare *United States v. Vincelli*, 2d Cir., 1954, 215 F. 2d 210; *United States v. Graham*, N. D. N. Y., 1952, 108 F. Supp. 794; *United States v. Strebel*, D. Kans., 1952, 103 F. Supp. 628.

### XXXI.

Respondent implies that what petitioner is seeking here is "a separate hearing" in the appeal board. What petitioner is after here is not a new hearing. What he desires is notice of the adverse recommendation so that he may write a letter to the appeal board and state his position before his case is finally determined. All that petitioner wants is notice and an opportunity to reply. The registrants in *United States v. Fry*, *supra*; *United States v. Stiles*, *supra*; *Eagles v. Samuels*, *supra*; and *Degraw v. Toon*, *supra*, were not seeking a new hearing. The courts held that they were entitled to notice. Since all that petitioner here is seeking is the

right to notice and an opportunity to reply, then he is seeking for no more than the registrants in the cases just referred to.

### XXXII.

All the talk (pages 32-33, respondent's brief) about the Department of Justice procedure is wholly irrelevant and immaterial. While petitioner has the right to be heard in the Department of Justice, he never at any time has an opportunity to be heard on the so-called advice or recommendation to the appeal board. The action taken by the Assistant Attorney General is wholly without notice to the petitioner. It is stated that a more uniform type of procedure would be provided by overruling petitioner in this case. There would still be a uniform type of procedure even though this Court were to hold that due process of law is required. If the rights of petitioner have been violated by this action of the Department of Justice, then the rights of every other registrant denied the conscientious objector classification have been violated. What the Court should do is establish a uniform type of procedure that accords with due process of law, by declaring the present procedure to be invalid.

At the top of page 33 it is stated that what Congress intended for the Department of Justice to supply to the appeal boards was "an expert opinion." This is not true. What Congress wanted was stated by Senator Gurney. He said: "What we are after really are the facts and the Department of Justice has always shown itself perfectly capable of uncovering the facts."—94 Cong. Rec. 7305.

### XXXIII.

Respondent implies (page 33 of the brief) that draft board proceedings are not quasi-judicial proceedings. The courts have held that draft board proceedings are quasi-judicial.—*Gibson v. Reynolds*, 8th Cir., 1949, 172 F. 2d 95

(cert. denied 337 U. S. 925 (1949)) ; *Dodez v. Weygandt*, 6th Cir., 1949, 173 F. 2d 965 ; *contra United States v. Bouziden*, W. D. Okla., 1952, 108 F. Supp. 395.

Regardless of whether the proceedings are legislative or not, the fact of the matter is that the minimum of due process of law requires notice of the giving of the adverse recommendation in the same way that due process of law requires notice of the sending of the file to the appeal board in order to give the registrant an opportunity to contest the I-A classification given by the local board.

#### XXXIV.

It is said that petitioner "had ample notice that the Selective Service System intended to classify him I-A." (Respondent's brief, page 33) There was absolutely no notice at all that the appeal board was going to classify him I-A. He did not know the nature of the recommendation by the hearing officer. He had no knowledge of the recommendation by the Department of Justice. He could very well expect that the recommendation would be favorable when he had his appearance before the hearing officer, because the hearing officer did not tell him what his recommendation was going to be. The appeal board did not notify petitioner before it classified him I-A that he was to be thus classified. Then how can the respondent tell the Court that petitioner had "ample notice that the Selective Service System intended to classify him I-A"? (Respondent's brief, page 33) This is a groundless assertion that misleads.

#### XXXV.

It is stated (page 34) that petitioner could present facts at the hearing before the hearing officer. It is said that he could get a summary of the unfavorable information in the FBI file. It is said that he could freely express his views before the hearing officer and present all of his side of the case. But after all this is done the respondent still does not

show the Court why it is that petitioner should not be notified and given an opportunity to rebut the unfavorable recommendation. It would take no longer than the time required for the appeal board or the Department of Justice to write a letter and have the registrant answer it. There would certainly be no undue delay or hobbling of the Selective Service process. This very short delay is certainly not so great an injury to due process of law as is the damage done by permitting trials behind a person's back. The procedure in this case is similar to star-chamber proceedings. Such one-sided approaches to a tribunal have always been condemned. Secret conferences between the judge and one of the parties without an opportunity for the other side to be heard are reprehensible in any tribunal, judicial or administrative. That is exactly what was done in this case. There was no request for an "additional step" for petitioner that was not required by due process of law, which required the appeal board or the Department of Justice to take the first step by giving fairly the required notice of recommendation. There is every necessity under due process of law for notice. There must be an observance of rudimentary requirements of fair play. (*Chin Yow v. United States*, 208 U. S. 8 (1908); *Ng Fung Ho v. White*, 259 U. S. 276 (1922)) A fraud order in the Post Office Department must be conducted with notice.—*Pike v. Walker*, App. D. C., 1941, 121 F. 2d 37; see also *Boeing Air Transportation, Inc. v. Farley*, App. D. C., 1935, 75 F. 2d 765.

### XXXVI.

Respondent asserts (page 34) that because exemption is a special privilege granted as a matter of grace by Congress registrants can be denied due process of law that is required according to minimum standards of decency in administrative agencies. If this statement is correct, then the Court was wrong in deciding as it did in *Eagles v. Samuels*, 329 U. S. 304 (1946). To prejudice the Court against peti-

tioner respondent says that there have already been "fairly long delays in the classification of persons claiming conscientious objector status." (See page 34.) It is said that further delays are not to be encouraged. With this petitioner does not disagree, but the further delay here to satisfy the minimum requirements of due process would be only a matter of a few days. It would be up to the appeal board to determine and notify the registrant how many days he had to answer the recommendation of the Department of Justice. Surely this brief delay would not break down the wheels of the military machinery. The country would be better served by registrants' being accorded a fair trial and fair play in the Selective Service System than by the Selective Service System's begrudging and denying a few days in which registrants could reply to an adverse recommendation. It is better that all the conscientious objectors not feel that they are being tried behind their backs. The morale of all registrants would be subserved by a decision that would restore public confidence in the Selective Service System as being "fair and just" even though summary in operation. It is not true that the "standards of due process have thus been more than adequately met."

### XXXVII.

Respondent relies upon *National Labor Relations Board v. Mackay Radio and Telegraph Company*, 304 U. S. 333, and *Local Government Board v. Arlidge*, [1915] A. C. 120, and other cases, on page 33 of its brief. These cases are shown clearly not to be applicable in the situation here, by Chief Justice Vanderbilt for the New Jersey Supreme Court in *Mazza v. Cavicchia*, 105 A. 2d 545, 556-561 (May 24, 1954). In the concluding part of that opinion he says for the court: "This, as we have seen from the cases in every court of last resort except the British House of Lords, has been held to preclude the submission by a hearer to the deciding authority of secret reports containing findings of

fact, conclusions of law and recommendations for the disposition of the case (105 A. 2d 25, page 561) The holding in the *Mazza* case, *supra*, is directly in point with this case and should be applied here.

### CONCLUSION

WHEREFORE, for the reasons above stated and for those appearing in the main brief for petitioner, it is submitted that the judgment of the court below should be reversed.

Respectfully,

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January, 1955.



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No. 69

In the Supreme Court of the United States

October Term, 1954

JAMES V. GORDON, Petitioner

vs.

UNITED STATES OF AMERICA

WILLIAM J. BROWN, Respondent



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# ***In the Supreme Court of the United States***

OCTOBER TERM, 1954

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No. 69

JOE VALDEZ GONZALES, PETITIONER

v.

UNITED STATES OF AMERICA

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE SIXTH  
CIRCUIT*

---

**BRIEF FOR THE UNITED STATES IN OPPOSITION**

---

## **OPINION BELOW**

The opinion of the Court of Appeals (R. 98-100) is reported at 212 F. 2d 71. The order of the District Court denying a motion for judgment of acquittal, incorporated by reference in the opinion of the Court of Appeals, appears at R. 81-92.

## **JURISDICTION**

The judgment of the Court of Appeals was entered on April 15, 1954 (R. 97). The petition for a writ of certiorari was filed on May 10, 1954. The jurisdiction of this Court is invoked

under 28 U. S. C. 1254 (1). See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

#### QUESTIONS PRESENTED

1. Whether the denial by the selective service board of petitioner's claim of classification as a conscientious objector was without basis in fact.

2. Whether it is required, under the Fifth Amendment or the Universal Military Training and Service Act, that a registrant be given further notice and opportunity to present evidence in support of his claim of classification as a conscientious objector after the Department of Justice has made its recommendation to the Appeal Board.

#### STATUTE INVOLVED

Universal Military Training and Service Act, 62 Stat. 604, 612, 622; 65 Stat. 75, 86:

Section 6 (j) [50 U. S. App., Supp. V, 456 (j)]:

Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political,

sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4 (b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate \* \* \*. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to

be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4 (b) such civilian work contributing to the maintenance of national health, safety, or interest as the local board may deem appropriate \* \* \*. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. \* \* \*

Section 12 (a) [50 U. S. C. App. Supp. V, 462 (a)]:

\* \* \* Any \* \* \* person \* \* \* who \* \* \* refuses \* \* \* service in the armed forces \* \* \* or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title

\* \* \* shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than \$10,000, or by both such fine and imprisonment \* \* \*.

#### STATEMENT

Petitioner seeks review of the judgment of the Court of Appeals for the Sixth Circuit (R. 97), affirming the judgment of the District Court for the Eastern District of Michigan finding him guilty of violating the Universal Military Training and Service Act by refusing on February 19, 1953, to be inducted into the armed forces, and imposing a sentence of three years' imprisonment and a fine of \$500 (R. 93).

Petitioner's record with the selective service system may be summarized as follows:

He was born on July 22, 1931, and registered on January 4, 1950 (R. 34). In his classification questionnaire, filed on March 9, 1951, petitioner claimed that he was ordained as a minister of the Jehovah's Witnesses sect on February 19, 1950 (R. 37), and that he was a conscientious objector (R. 39).

He further stated that his education had consisted of elementary school, two years of high school, and "private instruction by Prof. H. Graffis" in the Bible, commencing in November 1949 and leading to a certificate on October 1, 1950 (R. 38); that he had been married on

September 27, 1948 (R. 37); that he had been working for four years as a "crater bander and car checker", but did not expect to continue indefinitely in this trade (R. 37-38); that since August 19, 1950, his work had been with Great Lakes Steel Corporation; and that he presently worked an average of 40 hours per week at \$1.50 per hour (R. 38).

In his special form for conscientious objectors, filed on April 3, 1951 (R. 43), petitioner stated, *inter alia*, that he was opposed to non-combatant training and service as well as to participation in war (R. 43); that:

The basis for my believe is found in the ten commandments of God found in the Bible—Love of God and Love of neighbor—Anything that would cause me to violate these I couldn't do. [R. 43];

that he believed in force "[i]n protection of person and ministerial activities, but at no time in aggression" (R. 44); that the depth of his religious convictions was demonstrated by the fact that in December 1949 he "started out actively in the service of God, after some home Bible studies and on October 1 of 1950 was recognized as a pioneer" (R. 44); that he had given no public expression to his claim of conscientious objection, except as "stated above" (R. 44); that he had lived at 338 Melrose Place, San Antonio, Texas (the address of his father) until 1948 and thereafter in Detroit (R. 45); and that both his



parents were Catholics (R. 45-46). In response to the request, in the form, for an official statement of the sect in relation to participation in war, petitioner stated, "I am basing myself entirely on my knowledge of the Bible" (R. 46).<sup>1</sup>

On April 10, 1951, petitioner was classified III-A (R. 40). He requested a personal appearance before the board (R. 49), but the case was forwarded to the appeal board, which likewise classified him III-A (R. 50), and he was so notified on June 15, 1951 (R. 40).

On January 8, 1952, petitioner was reclassified I-A (R. 40) and requested a personal appearance (R. 50). At the hearing on February 12, 1952, petitioner testified that, as a pioneer since October, 1950, he devoted a hundred hours per month "to ministerial activities" (R. 53); that his 40 hours per week with the steel company did not interfere with his religious work (R. 53, 56); that his congregation met every Thursday and "sometimes talks [were] handed to [peti-

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<sup>1</sup> The selective service file also discloses the following, filed on April 8, 1951:

An affidavit of 22 persons that they "recognize[d]" petitioner as "a minister of the Gospel"; that they had observed him for a year and a half regularly attending meetings for advanced study and "attending and taking part in the divinity school of Jehovah's Witnesses as well as performing other duties required of ministers of the Gospel" (R. 48).

A certificate of four persons that petitioner was "conducting weekly Bible studies with [them]," and that they "recognize[d] him to be a minister of the gospel and [they] received spiritual benefit by his weekly visits" (R. 49).

tioner] that [he] should make and other times [petitioner] conduct[ed] Bible studies with different people" in homes and also in the hall of the ministry school (R. 55-56); and that he was also the advertising servant of the downtown unit, arranging for distribution of 2,000 magazines per month (R. 55).

Petitioner further testified that, as stated in the special form, his claim that he was a conscientious objector was based entirely on his personal interpretation of the Bible (R. 54); that there was no statement in the regular creed relating directly to war and that some Jehovah's Witnesses joined the armed forces (R. 57); that although the steel company for which he worked manufactured articles of war he had to earn his living, just as he had to pay income tax to a Government which might apply some of the money to articles of war—that this was only "rendering unto Caesar things that are Caesar's," as distinguished from one's life which does not "belong to him" (R. 58).<sup>2</sup>

<sup>2</sup> In addition to the transcript of the hearing, a summary appears in the file, as follows (R. 51-52):

2/12/52.

**GONZALES**

Claims he is a minister or C. O.

Ordained in Feb. 1950.

Pioneer in Oct. 1950.

Employed at Gt. Lakes Steel—8/18/50 to data.

Not a paid minister.

No certificate of ordination.

All activities are voluntary.

[Footnote cont'd on next page]

On February 19, 1952, the I-A classification was continued (R. 40), and upon appeal (R. 61), the case was referred, on June 2, 1952, to the Department of Justice for investigation and recommendation (R. 41). The Department of Justice, on December 1, 1952, reported to the appeal board the following additional facts, *inter alia*: that petitioner had previously been a Catholic, and that his five sisters and a brother, as well as his parents, were Catholics (R. 67); that petitioner's wife had become a Jehovah's Witness in 1941 and petitioner was "baptized a member in February 1950" (R. 67); and that petitioner and his wife were "said to be very religious" (R. 67). The report concluded (R. 67-68):

After a personal appearance, the Hearing Officer stated that registrant appeared

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Advertising Servant for Downtown Area—Distributing magazines.

Meet various days for bible study.

Meet at various homes of members.

No church as such.

Does missionary work.

Theocratic Ministry School.

Not a school of theology.

Theocratic Aid to Kingdom Publishers a book outlining procedure. No declaration in book or teaching directly outlawing war.

It is a matter of personal interpretation.

2/19/52 IA JG IA PON.

Reason for working—Manufacturing materials for war. Would not aid injured if hurt in aggressive way or in battle.

"Render unto Caesar," etc.

2/19/52.

IA JG.

to be a sincere Jehovah's Witness but concluded that his affiliation with that sect has been too recent and too closely related to his draft status to warrant the acceptance of his conscientious objector position as genuine. The fact that registrant became a member of the Jehovah's Witness sect one month after his Selective Service System registration in January, 1950, despite the fact that his wife had been a member for many years, lends weight to this conclusion.

After consideration of the entire file and record, the Department of Justice finds that the registrant's objections to combatant and noncombatant service are not sustained. \* \* \*

Petitioner was classified I-A by the appeal board (R. 68-69), and on February 19, 1953, refused to be inducted (R. 77-78).

At the trial, the Department of Justice hearing officer's report to the Department, dated August 11, 1952, was submitted in evidence. It summarized the facts adduced in petitioner's appearance before him and in an F. B. I. report, substantially as related above in the summary of petitioner's statements and the recommendation of the Department of Justice (R. 12-16). The report concluded (R. 15-16):

Registrant appeared to be a sincere Jehovah's Witness and as such is conscientiously opposed to war. \* \* \*

Although registrant is a "Pioneer" in his religious sect, and devotes at least 100 hours a month in religious activity, his affiliation with the sect has been too recent to warrant acceptance thereof as a deep-seated conviction. Until the fall of 1949 he was a Catholic and his conversion to the Jehovah's Witnesses is too closely related to his selective service status to be accepted yet as genuine.

**Recommendation:**

Claims of ministerial and conscientious objector classification not established. Class I-A classification sustained.

Upon cross-examination, the hearing officer testified that while petitioner "appeared" to be "a sincere Jehovah's Witness," his status as a conscientious objector was negated "upon the entire file," which disclosed as the "principal element" that the change from an extensive personal and family history of Catholicism was "too closely affiliated with his registration with the Selective Service" (R. 19-20). The witness was asked whether "a person could not be a conscientious objector today because he was not one yesterday?" (R. 19). He replied that the question was not one to be answered "as a general question" since "this particular case was an exceptional one. \* \* \* All of that added up to one thing to me. And I have had other cases where people would adopt a conscientious objector sect or a religious

affiliation just in order to avoid induction or induction into military service" (R. 19-20).

### ARGUMENT

1. The essence of petitioner's first contention is that the denial of his claim to classification as a conscientious objector was arbitrary and capricious. The contention is thus directly stated in his question IV (Pet. 4), and is indirectly stated in his questions II, III, and V, in which petitioner treats separately each of several facts alleged to have been relied upon by the Appeal Board.

The proper inquiry, of course, is not whether any one separate element of fact is sufficient in itself to support the classification by the board; rather the question is whether all the facts, considered in their interrelationship and in their cumulative effect, establish a basis for the classification.<sup>3</sup> Moreover, if there are facts supporting the board's decision, the classification is not to be set aside merely because another tribunal might have reached a different appraisal of the weight of the facts. *Estep v. United States*, 327

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<sup>3</sup> Petitioner makes the assertion, for example: "The courts below held that [registrants] could lose their conscientious objector status if they worked or were willing to work in a defense plant" (Pet. 24). No such holding was made. The participation in such activity was considered as only one element of a group of elements relating to the sincerity of petitioner.

U. S. 114, 122-123, quoted in *Dickinson v. United States*, 346 U. S. 389, 394.

Since the complex combinations of facts and dates involved differ in each case of this kind, we submit that the instant case does not involve a conflict of decisions, as petitioner asserts. Thus, in *Taffs v. United States*, 208 F. 2d 329, 330 (C. A. 8), certiorari denied, 347 U. S. 928, *Schuman v. United States*, 208 F. 2d 801, 805 (C. A. 9), and *Hartman v. United States*, 209 F. 2d 366, 369 (C. A. 2), upon which petitioner relies—to cite only a single difference from the instant case—the registrants were considered by the hearing officers to be sincere in their avowal of conscientious objections and the recommendations against granting the exemption were based either upon the nature of the concededly sincere belief, or simply upon the recency of their adherence to their professed beliefs in relation to their obligations under the draft law. Here, on the other hand, no creed of petitioner's sect is involved and the time of petitioner's conversion was only one of the elements considered in determining the depth and honesty of his claim.

Petitioner registered on January 4, 1950. He became a Jehovah's Witness by baptism on February 19, 1950. Even if there be added to this brief period between his registration and baptism the additional month or two before January 4 in which, as he stated, he had engaged in "some"



Bible study and active "service of God" (*supra*, p. 6), there was at most only a very brief period for acquiring the deep-seated convictions petitioner claimed.<sup>4</sup>

The significance of the time of petitioner's adoption of his new faith becomes even more clear when viewed in the light of his prior history and other facts. It was in this light that the hearing officer, the Department of Justice, and presumably the appeal board as well, disbelieved his avowal of conscientious objections as being too recent in origin and too closely related in point of time to his registration to be convincing.<sup>5</sup> There was the fact that although petitioner's wife had been a Jehovah's Witness for eight years, any influence on her part elicited no action from him from the time of the marriage in 1948 until after his registration, or at most the very eve of registration. Petitioner had been a Catholic and all his family still were Catholics.

Petitioner himself stated and emphasized that becoming a member of the sect did not automatically make one a conscientious objector, since this

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<sup>4</sup> Petitioner knew, of course, in this previous month or two that, being 18, he would have to register.

<sup>5</sup> Petitioner's assertion that the court below held "that petitioner was \* \* \* sincere in his objections to participation in war" (Pet. 23) is a misstatement. The court held the contrary, pointing out the distinction between sincerity in the general beliefs of the sect and sincerity in the independent matter of conscientious objection to participation in war (R. 99).

was left to each member to determine for himself. As petitioner pointed out, some of Jehovah's Witnesses joined the armed forces.

Finally, there was the affirmative fact that petitioner worked in a steel plant manufacturing articles for use in war, work which he had commenced in August, 1950 (R. 51), some months after he claimed to have become a conscientious objector.

It cannot be contended that a registrant's naked assertion of sincerity is binding on the selective service system in every case except the rare one in which evidence may be obtained that the registrant slipped into an outright confession or boast concerning the exaggeration or actual falsification of his true belief. The fact must be ascertained, like subjective facts in so many other branches of the law, by the application of judgment and experience to the available objective facts. Upon the record here, there was clear basis in fact for the conclusion that petitioner had not arrived by reason of any religious training or belief at such conscientious objection to war as is required for the statutory exemption.\*

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\* Petitioner argues that the case involves a question (Pet. 2, 22-23) whether his willingness to use force "in protection of person and ministerial activities" (R. 44) constitutes a basis in fact for denial of the conscientious objector classification. We find no indication of reliance upon this fact by the hearing officer, the Department of Justice, the selective service system boards, the trial judge, or the Court of Appeals.

[Footnote cont'd on next page]

2. Petitioner contends that due process and the necessity of fair and just treatment under the Universal Military Training and Service Act require that the appeal board give a registrant an opportunity to answer a recommendation by the Department of Justice (Pet. 5-6 [Point VI], 28-30 [Point V]). The short answer is that Congress, while providing in great detail for the additional precaution of an investigation and hearing by the Department of Justice, did not provide or intend to provide in addition yet another *de novo* circuit of charge and counter-charge before the appeal board. Petitioner's contention overlooks the extremely narrow limits of the function of the Department of Justice as a merely recommending body, as set forth by this Court in *United States v. Nugent*, 346 U. S. 1, 9-10:

\* \* \* [N]either the Department's "appropriate investigation" nor its "hearing" is the determinative investigation and the determinative hearing in each case. It has regularly been assumed that it is not the function of this auxiliary procedure to provide a full-scale trial for each appealing registrant.

\* \* \* \* \*

---

Petitioner's statement (Pet. 2) that "[t]he Court of Appeals, as a basis for affirmance, found that petitioner's willingness to use force in self-defense was a basis in fact", is a complete misapprehension of clear language of the Court of Appeals. See R. 99.

Respondents urge that they have a right to such a procedure under the Fifth Amendment. We cannot agree.

\* \* \* \* \*

It is always difficult to devise procedures which will be adequate to do justice in cases where the sincerity of another's religious convictions is the ultimate factual issue. It is especially difficult when these procedures must be geared to meet the imperative needs of mobilization and national vigilance—when there is no time for “litigious interruption.” *Falbo v. United States*, 320 U. S. 549, 554 (1944). Under the circumstances presented, we cannot hold that the statute, as we construe it, violates the Constitution.<sup>7</sup>

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<sup>7</sup> Petitioner's citations of hearing requirements in dissimilar administrative proceedings are inapposite (Pet. 29–30), as is also his reference (Pet. 29) to *Brewer v. United States*, 211 F. 2d 864 (C. A. 4), involving the totally different situation of a refusal of access, to an inquiring registrant, with respect to reports which were in the selective service file and at one time were considered by the appeal board. Similarly, *De Graaf v. Toon*, 151 F. 2d 778, 779–780 (C. A. 2), involved information not in the file at the time of the personal hearing before the local board, and apparently considered by the local board after the hearing. *United States v. Balogh*, 157 F. 2d 939, 941, 943 (C. A. 2), vacated on other grounds 329 U. S. 692 (see 160 F. 2d 999), involved consideration by the local board of the report of a panel of ministers, to which the registrant may have had no access, and which was held improper matter for consideration in any event.

## CONCLUSION

The questions presented on the particular facts of this case were correctly decided below. No conflict of decisions is involved. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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JUNE 1954.

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# ***In the Supreme Court of the United States***

OCTOBER TERM, 1954

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No. 69

JOE VALDEZ GONZALES, PETITIONER

v.

UNITED STATES OF AMERICA

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*ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE  
SIXTH CIRCUIT*

---

**BRIEF FOR THE UNITED STATES**

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## **OPINIONS BELOW**

The opinion of the Court of Appeals (R. 97-99) is reported at 212 F. 2d 71. The order of the District Court denying a motion for judgment of acquittal, incorporated by reference in the opinion of the Court of Appeals, appears at R. 81-92.

## **JURISDICTION**

The judgment of the Court of Appeals was entered on April 15, 1954 (R. 97). The petition for a writ of certiorari was filed on May 10, 1954, and

was granted on October 14, 1954 (R. 100). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

#### QUESTIONS PRESENTED

1. Whether the denial by the selective service appeal board of petitioner's claim for classification as a conscientious objector was without basis in fact.

2. Whether it is required by the Fifth Amendment or the Universal Military Training and Service Act that a registrant be given further notice and further opportunity to support his claim for classification as a conscientious objector after the Department of Justice has made its recommendation to the appeal board.

#### STATUTE AND REGULATIONS INVOLVED

Pertinent portions of the Selective Service Act of 1948, and implementing Selective Service regulations, are set forth, *infra*, pp. 36-40.

#### STATEMENT

Petitioner was found guilty of refusing on February 19, 1953, to be inducted into the armed services. He was sentenced to imprisonment for three years and fined \$500. (R. 93.) On appeal, the Court of Appeals for the Sixth Circuit affirmed the judgment of conviction (R. 97), holding that the induction order was based on a valid classification (R. 97-99).

Petitioner's record with the Selective Service System may be summarized as follows:

He was born on July 22, 1931, and registered under the selective service laws on January 4,

1950 (R. 34). In his classification questionnaire, filed on March 9, 1951, petitioner claimed that he had been ordained as a minister of the Jehovah's Witnesses sect on February 19, 1950 (R. 37),<sup>1</sup> and that he was a conscientious objector "to participation in war in any form" (R. 39).

He further stated that his education had consisted of elementary school, two years of high school (from which he was not graduated), and "private instruction by Prof. H. Graffis" in the Bible, commencing in November, 1949, and leading to a certificate on October 1, 1950 (R. 38);<sup>2</sup> that he had been married on September 27, 1948 (R. 37); that he had been working for four years as a "crater bander and car checker", but did not expect to continue indefinitely in this trade (R. 37-38); that since August 19, 1950, his work had been with Great Lakes Steel Corporation; and that he presently worked an average of 40 hours per week at \$1.50 per hour (R. 38).

Under the space in which the petitioner was given his option of indicating the classification to which he thought he was entitled, he indicated "Regular or ordained minister" (R. 39).<sup>3</sup>

In his special form for conscientious objectors, filed on April 3, 1951 (R. 43), petitioner claimed

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<sup>1</sup> Elsewhere in the record it appears that this "ordination" of February 19, 1950, consisted of being baptized (R. 13, 67).

<sup>2</sup> Although the petitioner described his religious training as "private instruction" in his questionnaire (R. 38), it became alternatively "home Bible studies" and "divinity school" in his special conscientious objector form (R. 44).

<sup>3</sup> Although in the printed record (R. 39) it would appear that this answer was under another space, reference to the original questionnaire shows that he crossed out an entry in the space provided, and made the entry in the next insert line.

exemption from combatant and noncombatant service. He stated (R. 43):

The basis for my belief is found in the ten commandments of God found in the Bible—Love of God and Love of neighbor—Anything that would cause me to violate these I couldn't do.

He said that he believed in force "[i]n protection of person and ministerial activities, but at no time in aggression" (R. 44); that the depth of his religious convictions was demonstrated by the fact that in December 1949 he "started out actively in the service of God, after some home Bible studies and on October 1 of 1950 was recognized as a pioneer" (R. 44); that he had given no public expression to his claim of conscientious objection, except as "stated above" (R. 44); that both his parents were Catholics (R. 45-46). In response to the request in the form for an official statement of his sect in relation to participation in war, petitioner stated, "I am basing myself entirely on my knowledge of the Bible" (R. 46).<sup>4</sup>

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<sup>4</sup> The selective service file also discloses the following, filed on April 8, 1951:

1. An affidavit of 22 persons that they "recognize[d]" petitioner as "a minister of the Gospel"; that they had observed him for a year and a half regularly attending meetings for advanced study and "attending and taking part in the divinity school of Jehovah's Witnesses as well as performing other duties required of ministers of the Gospel" (R. 48).

This affidavit refers to petitioner's participation in Bible study and "other duties required of ministers of the Gospel", and concludes "All of his said activities having been observed

Petitioner attached to this special conscientious objector form (R. 44) an unsigned printed form dated October 1, 1950, under the letterhead of the Watchtower Bible and Tract Society which, though not mentioning petitioner by name, told the bearer (R. 41-42):

Date October 1, 1950 SC

THIS CARD CONSTITUTES YOUR PIONEER ASSIGNMENT to witness in territory of the Downtown Unit, Detroit, Mich. Company, obtaining territory locally from the servant. This includes business districts. Please show this card to the company servant as his notification of your assignment. Return it to this office when you are through working there.

Servant: [blank] Your fellow witnesses,

Watchtower Bible and Tract Society, Inc.

This assignment cancels all previous assignments.<sup>5</sup>

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by us regularly during the past one and one-half years." Since the affidavit is dated April 1, 1951, that would put the commencement of his ministerial activities back to October 1, 1949, when by his own admission he did not begin his Bible studies until November 1949 (R. 38), and had not "started out actively in the service of God" until December 1949 (R. 44), and the record shows he was not baptized ("ordained") into the Jehovah's Witnesses faith until February 19, 1950 (R. 13, 37, 67).

2. A certificate of four persons that petitioner was "conducting weekly Bible studies with [them]", and that they "recognize[d] him to be a minister of the gospel and [they] received spiritual benefit by his weekly visits" (R. 49).

<sup>5</sup> Evidently during the hearing before the local board, petitioner procured another copy of the pioneer assignment form and had a Mr. Paul Truscott, his presiding minister, sign it (R. 59, see also: R. 46).

On April 10, 1951, petitioner was classified III-A, which entitled him to dependency deferment (R. 40). He requested a personal appearance before the board (R. 49), but the case was forwarded to the appeal board, which likewise classified him III-A (R. 50). He was so notified on June 15, 1951 (R. 40).

On January 8, 1952, petitioner was reclassified I-A (available for military service) (R. 35, 40).<sup>6</sup> Pursuant to his request, he was granted a hearing before his local board to contest the new classification (R. 10, 50). At the hearing on February 12, 1952, petitioner testified that he had been a "pioneer" (i.e., "a person who attends full time") since October 1950, and that his "ministerial duties" consumed a hundred hours per month (R. 53). His particular job was as "advertising servant of the downtown unit" and in this capacity he distributed two thousand magazines per month (R. 55). He further testified that his 40 hours per week (i.e., "the usual working week") with the steel company did not interfere with his religious work (R. 53, 56). His congregation met every Thursday and "sometimes talks [were] handed to [petitioner] that [he] should make and other times

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<sup>6</sup> The Act of June 19, 1951, c. 144, title I, Sec. 1, 65 Stat. 75, 85 50 U.S.C. App. 456(h), removed as a basis for dependency deferment (Class III-A) the fact that a registrant has a wife, unless there are also children or unless circumstances of "extreme hardship" and "privation" would result to the wife from conscription of the husband. See also the implementing regulation, 32 C.F.R. 1622.30, promulgated on September 28, 1951.

[petitioner] conduct[ed] Bible studies with different people" in homes and also in the hall of the ministry school (R. 55-56). He had no particular church of his own, but attended with the others a Theocratic Ministry School, which was not recognized as a divinity school by the State of Michigan (R. 56-57).

Petitioner further testified that, as stated in his special conscientious objector form, his claim that he was a conscientious objector was based entirely on his personal interpretation of the Bible (R. 54, 57). He said that there was no tenet of Jehovah's Witnesses "relating directly to war"; that "it is up to each one to go according to their own conscience"; and that some Jehovah's Witnesses have joined the army and navy "and that is by their own conscience" (R. 57). He was then questioned as to how he could reconcile his religious beliefs with his work with the Great Lakes Steel Company which manufactured articles of war (R. 57-58). He replied that this (R. 58), "does not have any bearing in my belief any more than my paying an income tax", and "I feel I have to make my living some way even if I raised pigs, and I am still doing the same thing when I pay my income tax. I do not know where the money goes but that is not my business. 'Is rendering unto Caesar things that are Caesar's' ". He explained that he could not give his life for Caesar (R. 58), "because it does not honestly and truthfully belong to him. It belongs to God who gave it. Caesar's things which belong to him are those things such as—obey-



ing his words so far as they are not in objection or against God's command." He stated he would be the sole interpreter of what belongs to Caesar, and that (R. 59):

While the statement is for not supporting Caesar because God's Word says not to kill, it states that friendship of the world, which is commerce and politics which makes up the world, is enmity with God.<sup>7</sup>

In addition to the transcript of the local board proceedings, the board also prepared a summary of his testimony which appears in petitioner's selective service file (R. 51-52).<sup>8</sup>

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<sup>7</sup> At his trial, petitioner told the court that he was not a pacifist, and that (R. 32) "under certain circumstances, and those would be only biblical, I possible would defend myself." He explained "biblical" circumstances as follows (R. 32-33):

"By that I mean that if it were only a command from God, like it was in the time of the Israelites. In the times of the Israelites many wars were fought but it was simply because the nation of Israel represented God's Kingdom on earth and today there is no nation that represents God's Kingdom on earth or that is the political expression of His Kingdom here on the earth."

<sup>8</sup> The summary states:

GONZALES 2/12/52

Claims he is a minister or C.O.

Ordained in Feb. 1950.

Pioneer in Oct. 1950.

Employed at Gt. Lakes Steel—8-18-50 to date.

Not a paid minister.

No certificate of ordination.

All activities are voluntary.

Advertising Servant for Downtown Area—Distributing magazines.

Meet various days for bible study.

[Footnote cont'd on next page]

On February 19, 1952, the I-A classification was continued by unanimous vote of the local board (R. 40), and on February 25, 1952, petitioner noted an appeal (R. 61). The appeal board, after making a tentative finding against the I-0 (conscientious objector) claim, or lower classification, forwarded the file to the Department of Justice for hearing (R. 41, 64-65). The Department of Justice, on December 1, 1952, reported to the appeal board the following additional facts, *inter alia*: that petitioner had previously been a Catholic, and that his five sisters and a brother, as well as his parents, were Catholics (R. 67); that petitioner's wife had become a Jehovah's Witness in 1941 and petitioner was "baptized a member in February 1950" (R. 67); and that petitioner and his wife were "said to be very religious" (R. 67). It states, "Registrant bases his claim for exemption upon his own personal interpretation of the Bible with the guidance of the Watchtower Bible aids and relies particularly on the Ten Commandments. He

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Meet at various homes of members.

No church as such.

Does missionary work.

Theocratic Ministry School.

Not a school of theology.

Theocratic Aid to Kingdom Publishers a book outlining procedure. No declaration in book or teaching directly outlawing war.

It is a matter of person interpretation.

2/19/52 IA JG IA PON.

Reason for working—Manufacturing materials for war. Would not aid injured if hurt in aggressive way or in battle. "Render Unto Caesar," etc.

2/19/52.

IA JG.

believes in the use of force in self-defense." (R. 67.) The report concluded (R. 67-68):

After a personal appearance, the Hearing Officer stated that registrant appeared to be a sincere Jehovah's Witness but concluded that his affiliation with that sect has been too recent and too closely related to his draft status to warrant the acceptance of his conscientious objector position as genuine. The fact that registrant became a member of the Jehovah's Witness sect one month after his Selective Service System registration in January, 1950, despite the fact that his wife had been a member for many years, lends weight to this conclusion.

After consideration of the entire file and record, the Department of Justice finds that the registrant's objections to combatant and noncombatant service are not sustained. It is, therefore, recommended to your Board that registrant's claim for exemption from both combatant and noncombatant training and service be not sustained.

Petitioner was unanimously classified I-A by his appeal board on December 11, 1952 (R. 68-69). By letter of December 21, 1952, he attempted to appeal his case further on the basis of his claim to being a minister (R. 69-70). On January 13, 1953, he was notified that as the final classification by the appeal board was unanimous, no further appeal

was available (R. 71-72).<sup>9</sup> On February 3, 1953, petitioner was ordered to report for forwarding to an induction station on February 19, 1953 (R. 73). On February 19, 1953, petitioner reported but refused to be inducted (R. 76-78).

At the trial, the Department of Justice hearing officer's report to the Department, dated August 11, 1952, was submitted in evidence. It summarized the facts adduced in petitioner's appearance before him and in an F.B.I. report, substantially as related above in the summary of petitioner's statement and the recommendation of the Department of Justice (R. 12-16). Upon cross-examination, the hearing officer was questioned very closely about his statement in the report that petitioner had "appeared" to be "a sincere Jehovah's Witness". The hearing officer explained that despite petitioner's "appearance" on the hearing "his adoption of the Jehovah's Witness sect was too closely affiliated with his registration with the Selective Service" ("It seemed to be contemporaneous with his registration"), and "He was baptized in the Catholic faith, all of his family were Catholics, and he was such until 1948." He emphasized that this time parallel "was material to me because *I based my recommendation and conclusion upon the entire file*" [emphasis added] (R. 19). The witness was then asked whether "a person could not be a conscientious objector today because he was

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<sup>9</sup> On February 2, 1953, petitioner requested and received a copy of the transcript of his local board hearing (R. 73).

not one yesterday?" (R. 19). He replied that the question was not one to be answered "as a general question" since "this particular case was an exceptional one" (R. 19). Then ensued the following question and answer (R. 20):

Q. (By Mr. Leithauser) To be more specific, why did you feel in this particular case, Mr. Ray, that the proximity of the time when he became or claimed to become a Jehovah's Witness prevented him from being classified 1-O?

A. Based upon his antecedents, his religious background, the proximity of his conversion or adoption of the Jehovah's Witness sect to his classification by the Selective Service and also the manner in which he claimed to be a Pioneer, which is a very unusual thing, as far as Jehovah's Witnesses are concerned. All of that added up to one thing to me. And I have had other cases where people would adopt a conscientious objector sect or a religious affiliation just in order to avoid induction or induction into the military service.

In denying a motion for acquittal (R. 81-92), the trial court summarized the evidence contained in petitioner's selective service file and made a specific determination that his final classification was supported by ample basis in fact (R. 83-85). The Court of Appeals for the Sixth Circuit, in affirming the judgment below (R. 97-99), made a

similar finding for the reasons set forth by the district judge (R. 99).

#### SUMMARY OF ARGUMENT

### I

Petitioner failed to convince either the two selective service boards, the hearing officer, or the Attorney General's representative, that his alleged objections to combatant and noncombatant service were sincerely held. There is ample basis in fact to support this unanimous conclusion. Petitioner became of draft age on July 22, 1949. Although he came from a Catholic family and background, and apparently remained a Catholic until the fall of 1949 (or at least until his marriage in 1948, Pet. Br. 22), in November 1949, when registration became imminent, he commenced home Bible studies, and in December 1949 undertook some unexplained religious activities, just before his registration on January 4, 1950. In February he was baptized, and although he apparently had no duties of significance until the following fall, he claimed to be an "ordained minister" from that date. On June 24, 1950, the Korean war commenced and on August 19, 1950, he went to work for a steel company making implements of war. That fall, at a time of increasing tempo in the draft process, he became a "pioneer" under circumstances which appeared to the hearing officer to be unusual, and began for the first time to distribute magazines for his faith as one member of a "down-town unit" and to engage in other religious ac-

tivities after a full work-day in the steel plant.

This close synchronization of his religious activities with pressing draft possibilities, together with his inability to support his claim on anything except his own say-so, his equivocations to the local board, his sudden emergence from a dissimilar religious background to become a "minister" the month after registration, the acceleration of his religious activities after the commencement of the Korean conflict, his subsequent employment in a defense plant engaged in making war materials, the insubstantial character of his claim to be an ordained minister for draft purposes, all combine to discredit the good faith of his objections and provide ample basis in fact to support his final classification by the appeal board.

## II

Petitioner also argues that after the hearing he should have been served with the hearing officer's report and the Department of Justice recommendation prior to their consideration by the selective service appeal board so that he would have an opportunity to challenge them before the Selective Service System. Since there is no statutory authority for this extra procedural step and selective service regulations do not otherwise provide for it, petitioner is necessarily obliged to show that its absence results in such essential unfairness as would violate due process. This he has not done. The opinion of this Court in *United States v. Nugent*, 346 U.S. 1, makes clear that the Department of Justice "hearing" is not the equivalent of a



trial but is an investigative-advisory proceeding the purpose of which is "to forward sound advice, as expeditiously as possible, to the appeal board". Since the "advice" is only one part of the case considered by the appeal board, and may be accepted or rejected in whole or in part by that body, it is not the equivalent of an administrative order. No separate hearing is required to meet the conclusions contained in such an advisory report. Cf. *Norwegian Nitrogen Co. v. United States*, 288 U.S. 294, 318-319; *Chicago & Southern Air Lines, Inc. v. Waterman Steamship Corp.*, 333 U.S. 103; *Williams v. New York*, 337 U.S. 241.

Before his local board and at the Department of Justice hearing a registrant has ample opportunity to produce evidence and give full expression to his views. At the hearing he can rebut any adverse information. To allow the registrant a second opportunity to contest the facts underlying this recommendation of the officer who saw and heard him would merely afford new opportunity to record his disagreement which is already of record.

Due process is a matter to be considered in context. In this instance its demands are amply met by allowing the registrant opportunity to present his case and to rebut adverse information.

#### ARGUMENT

##### I

**The Selective Service Boards Had A Basis in Fact to Reject Petitioner's Assertions of Conscientious Objection.**

Although petitioner made alternative claims before the selective service boards to be both a mini-

ster and a conscientious objector, the gist of his present argument is that the rejection of his conscientious objector claim was without basis in fact. In attempting to develop this argument petitioner initially assumes that "the uncontroverted evidence supporting [his] claim places him *prima facie* within the statutory exemption \* \* \* " (cf. *Dickinson v. United States*, 346 U.S. 389, 397). Building on this assumption he concludes that there is no fact of any probative value to overcome his "proof" that he is opposed to all military service, combatant as well as noncombatant, and therefore that the rejection of his conscientious objector claim was the result of an arbitrary decision.

Before discussing the issue of whether there was any evidentiary matter in petitioner's selective service file on which the appeal board could have based its rejection of his claim, it is pertinent to observe that the objective tests for the ministerial exemption employed in the *Dickinson* decision (e.g. hours of service, ministerial duties, congregational leadership, education, recognition of status, ordination, etc.) cannot be transposed to fit the different statutory scheme by which the subjective questions of personal belief are tested, as we have more extensively developed in our briefs in *Simmons v. United States*, No. 251, this term, and *Witmer v. United States*, No. 164, this term. Petitioner's attempts to generalize the issues involved in the instant case (i.e. Is a last minute conversion a sincere conversion?) amply illustrate the fact that there is no precise litmus test by which "the character and good faith of the objections of the

person concerned”<sup>10</sup> can be appraised. Each registrant who claims conscientious objector status does so on an individual basis. Not only are there an infinite variety of individuals who appear before selective service boards, but each has a background which differs from all others. In addition, there are great variations in religious beliefs which are articulated in many ways and in varying degrees of clarity.

Congress has delegated to the Selective Service System the function of determining whether any particular claimant has adduced facts which establish his right to a narrowly drawn exception to the general duty of military service in times of national emergency. Cf. 32 C.F.R. 1622.1(c). This process consists of more than the mere examination of what he may be willing to put down on an impersonal government form. It requires a comprehensive type of appraisal which, in order to detect the good faith of what a claimant may say, also looks to the nature of what he does.<sup>11</sup> Statements of belief to the Selective Service System have a self-serving quality which to some extent lessens their evidentiary value. They can, how-

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<sup>10</sup> Section 6(j) of the Universal Military Training and Service Act (*infra*, p. 37).

<sup>11</sup> This is exemplified by the type of questions set forth in the special form for conscientious objectors (cf. e.g., “Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim made in Series I above? If so, specify when and where.”) (R. 42-47). This petitioner could cite no instance when he had communicated his conscientious scruples against participation in war to others.

ever, be corroborated by evidence of a consistent way of life which bespeaks sincerity. Stated in the converse, it is not enough that a claimant profess the sincerity of his beliefs for the record, if his way of life, manifest in the history set forth in his selective service file, could legitimately be interpreted by the Selective Service System to refute such formal assertions. This is the obvious intention of Congress, which, after providing for the exemption from both combatant and noncombatant training and service in the armed forces of the registrant who, *by reason of religious training and belief* (i.e., "an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation", but not including "essentially political, sociological, or philosophical views or a merely personal moral code") "*is conscientiously opposed to participation in war in any form*", then went on to provide a special inquiry by an outside agency (the Department of Justice) on the "*character and good faith of the objections of the person concerned*" [Emphasis added]. Obviously, Congress did not intend that any claimant could obtain the exemption by reciting a rote or formula of words which has not been assimilated by him as an article of faith and been given personal meaning in his way of life. The proposition that "actions speak louder than words" has particular applicability in this context. In order to demonstrate that what he says is actually a "belief" he must show that his behavior reflects the sincerity of his inner convictions. Where this consistency is not

demonstrated and where the claimant has not adequately explained away those inconsistencies between his formal statements of belief and incongruous action-patterns, the Selective Service System is entitled to draw logically permissible inferences from the discrepancy and to base its rejection of the claim on such circumstantial evidence.

In this case the appeal board's final classification was necessarily based on a totality of all of the evidence transmitted to it and contained in petitioner's selective service file. It's rejection of petitioners conscientious objector claim is amply sustained by factual circumstances which could reasonably have led to a conclusion that his objections were not made in good faith. It is not disputed that, if there was basis in fact for the selective service classification, the courts will not disturb that classification. *Estep v. United States*, 327 U.S. 114.

An analysis of that evidence shows the following facts:

Petitioner became of draft age on July 22, 1949. Prior to the fall of 1949, or at least until his marriage in 1948, he had been a Catholic as had his mother, father, five sisters, and a brother. There is no showing that he manifested any significant interest in other religious activities until the demands of military service became imminent. According to his own statement he commenced "private instruction by Prof. H. Graffis" in the Bible, in November 1949. On January 4, 1950, he regis-

tered under the selective service laws, and on February 19, 1950, he was baptized into the Jehovah's Witnesses faith. On June 24, 1950, the Korean war commenced, and on August 19, 1950, petitioner went to work for a steel company which he admits made implements of war.

Petitioner produced an unsigned form or card of the Watchtower Bible and Tract Society that neither bore his name nor signature of an officer of his church to show that he became a "pioneer" on October 1, 1950. Registrant explained the term "pioneer" as applying to one "who attends full time," which apparently meant "full time" after his forty hours a week of secular employment (R. 53). This card purportedly emanated from the office of that Society in Brooklyn, New York. During his local board hearing, however, he produced a copy of that form signed by his *own* presiding minister in charge of his unit.

After October 1, 1950, petitioner's principal religious duty seemed to consist of distributing or selling magazines for the Watchtower Bible and Tract Society as one member of a "downtown unit" under the leadership of a company servant who assigned him his territory. In his questionnaire received by his local board on March 9, 1951, however, he indicated that he was "regularly" serving as a minister; that he had been a minister since February 19, 1950 (the day of his baptism);<sup>12</sup>

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<sup>12</sup> There are conflicting statements in the record concerning the date when petitioner became a "minister". Since baptism into the Jehovah's Witness faith is considered tanta-

and that he had been formally ordained (on the same date). He also indicated his continuing employment with the steel company on a forty hour week basis.

The Department of Justice hearing officer on personal interview found that petitioner "appeared to be a sincere Jehovah's Witness" (i.e., gave the appearance at the hearing of being sincere in his religious affiliation) but nevertheless concluded that on the basis of his "entire file and record", including evidence of close synchronization between religious activities and pressing draft possibilities, his assertions of conscientious objection were not made out<sup>13</sup>

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mount to the ritual of ordination (all Jehovah's Witnesses being "ministers") it would seem that February 19, 1950, would mark petitioner's entry into the faith and give him status as a "minister", in the sense that the sect employs that term to encompass its entire membership. On the other hand there is an affidavit of 22 persons in the file (R. 48) to the effect that they recognized petitioner as a minister, that aside from religious meetings he had been "performing other duties required of ministers of the Gospel", and "All of his said activities" had been "observed" by the signators, "regularly during the past one and one-half years." Since the affidavit was dated April 1, 1951, his ministerial duties would relate back to October 1, 1949, several months before his formal entry into the faith, if the affidavit is given its literal meaning. In his special conscientious objector form when asked (R. 46), "When, where, and how did you become a member of said sect or organization?", he replied "In Dec. 1949, in Detroit, Mich., by actively serving".

<sup>13</sup> Petitioner states categorically in his brief (Pet. Br. 39) that "The hearing officer found Gonzales to be a sincere member of Jehovah's Witnesses." This conclusion was probably drawn from the language of the report that he "appeared" to be a sincere Jehovah's Witness. That comment was un-



These facts were all known to the appeal board and must be assumed to have been considered by them in rendering a unanimous vote against petitioner. The inquiry then is whether these facts considered in their totality support the selective service classification. We submit that the findings of the two courts below that they do is well reasoned. First, as the hearing officer observed, there is a close synchronization between petitioner's religious activities and selective service demands. Petitioner had been a member of another faith, and, for all the record shows, remained a Catholic until the fall of his eighteenth year, and a year after marrying a member of the Jehovah's Witnesses faith. By his own admission he took no active part in religious activities until December 1949 when eventual induction became imminent. In February he was baptized into the Jehovah's Witnesses faith a month after he actually registered. Although there is scant evidence that petitioner took any prominent role in religious activities before, on October 1, 1950, three months after the outbreak of the Korean War when induction was being speeded up, and the grav-

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doubtedly included to apprise the appeal board of the impression petitioner made at the hearing—information which would not otherwise be in the record. Even though the hearing officer discounted it in his evaluation, he could properly apprise the appeal board of this favorable factor. This impression, however, was not, as petitioner would have it, a finding that petitioner was in fact actually sincere or that he had personal beliefs regarding participation in war which met the statutory standards of "good faith." Reference to the hearing officers full recommendation (R. 15) and his later testimony (R. 18-20) indicates quite the reverse.

ity of our military commitments in Asia became apparent, he became a "pioneer" or "advertising servant".<sup>14</sup> Then and then only did he begin to devote an appreciable amount of time to religious activities. The close time parallel between his draft status and his religious activities could well have impressed the appeal board as no mere matter of coincidence.<sup>15</sup>

Other factors substantiate the fact that petitioner did not have the deep and abiding revulsion to both combatant and noncombatant service that he claimed. His principal emphasis before the local board was an attempt to show that he was an ordained minister. The dubious nature of this claim is in and of itself significant. He was not recognized as

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<sup>14</sup> As we have indicated, his assignment as a "pioneer" was made under rather peculiar circumstances in that his commission consisted of a mere impersonal printed form which was not even signed until shortly before or during his local board appearance. In his trial testimony the hearing officer cited as one basis of his recommendation (R. 20), "the manner in which he claimed to be a Pioneer, which is a very unusual thing, as far as Jehovah's Witnesses are concerned."

<sup>15</sup> Petitioner states (Pet Br. 40) that "The late change from Catholicism to the belief of Jehovah's Witnesses is no basis in fact whatever". Even if this were true of a late conversion standing by itself, it does not stand alone here. What makes the religious change in petitioner's record meaningful is his sudden emergence from a totally dissimilar background—at the precise time that he could feel the hot breath of the draft on his neck—to become a "minister" without any apparent duties or following. It is the close synchronization of his religious activities with the pressing draft that is significant. The change factor derives meaning from the context of all other evidence indicative of insincerity, and need not be considered as an abstract proposition. See also the Government's Brief in *Simmons v. United States*, No. 251, this term, pp. 23-24.

a leader or pastor either by a congregation of his own or by the public generally. Apparently he did not preach or teach. He performed no ordinances of public worship. He was simply one of a "downtown unit" of his faith engaged in group religious activity in his spare time. It is difficult to conceive that petitioner could have seriously and genuinely regarded his status as one of such a group sufficient to entitle him to preferential treatment under the selective service laws. This conclusion is reinforced by the fact that he related his ministry back to a time before he was assigned to a unit, and to a time when he performed few or no duties that even a zealous congregant of his faith might perform. His willingness to exaggerate, to stretch a point, and even to misrepresent in important particulars his ministerial claim, detracts by logical implication from his claim of being a conscientious objector with good faith scruples against any participation in the armed services.

There are other significant facts contained in petitioner's file. Bearing in mind that he claimed absolute exemption from military service on the basis that his conscience would not permit him to perform noncombatant duties as well as combatant, it may well have impressed the appeal board that almost two months after the commencement of the Korean conflict petitioner sought and was given employment in a steel factory engaged in making implements of war. When asked how the fact that the factory manufactured some articles that are used in war affected him, he replied (R. 58), "It does not have any bearing in my belief any more

than my paying an income tax." Then while telling the local board that it was of no concern to him that his work in a defense plant "would help create articles of war that kill people", he told them he would only assist wounded people "If they were not injured in aggression or if they were not in support of a political party", but not if they were "injured in battle" (R. 58).<sup>16</sup> The principal thrust of his statements to the appeal board was that he wished to maintain a position of personal neutrality from all worldly affairs (e.g. (R. 59): "\* \* \* friendship of the world, which is commerce and politics which makes up the world is enmity with God").<sup>17</sup> The board could properly conclude that such statements do not show the type of abhorrence to war as such to which alone the statutory exemption relates.<sup>18</sup>

Aside from evidence *against* petitioner's consci-

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<sup>16</sup> In this connection it is pertinent to note that I-A-O (available for non-combatant duty) registrants in induction are usually assigned life-saving duties in medical and hospital facilities consistent with their beliefs against bearing or using arms. Under the 1940 law all assignments of those drafted for non-combatant service were restricted by the Army and Navy to medical and hospital activities. Selective Service System Monograph No. 11, "Conscientious Objection", p. 332.

<sup>17</sup> For the reasons set forth in the Government's brief in *Sicurella v. United States*, No. 250, this term, petitioner's claim could probably have been denied on the ground, not here reached because of the evidence of insincerity, that his beliefs, even if sincerely held, are not the type of objection for which the statute grants exemption.

<sup>18</sup> At the local board hearing petitioner, after being asked (R. 57) "Is there any statement in your regular creed of Jehovah's Witnesses that relates directly to war?", replied, "No, they have nothing relating directly to war. It is up to each one to go according to their own conscience".

entious objector claim there was no real corroborating evidence *for* it. Although he filed two affidavits (one of dubious accuracy), these tend to support only his ministry claim and do not relate to his belief regarding participation in war. He produced no witnesses or documentary proof to establish what he stated was an individual position regarding participation in war (he denied that the Jehovah's Witnesses faith has any tenets forbidding participation in war (R. 57; fn. 18, p. 25, *supra*). Failure to communicate one's inner beliefs might have no significance at all in many cases or even in most cases. But here was a man who claimed to spend practically all of his time (after his full work-day in a steel mill) in religious meetings, exchanging ideas, in giving talks, and in other forms of group activity with co-religionists. During these hundreds of hours in such activities it seems hardly likely that, if the registrant had a real feeling in opposition to war, he would not have expressed it and that there would not be some one who could at least sign an affidavit to support his claim of objection to war. This failure of proof, taken together with certain equivocations in his statements to the local board, the synchronization of his religious activities with pressing draft possibilities, his sudden emergence from a dissimilar religious background to become a "minister" the month after his selective service registration, the acceleration of his religious activities after the commencement of the Korean conflict, his subsequent employment in a defense plant engaged in making war weapons, the flimsy factual basis

he presented in support of his claim to being a minister for draft purposes, all combine to discredit the good faith of his objections. Taken *in toto* they provide ample basis in fact for the final action of the appeal board in classifying him I-A.<sup>19</sup>

## II

### **A Copy of the Department of Justice Recommendation Was Not Required to be Served on Petitioner Prior to Its Consideration by His Selective Service Appeal Board.**

Petitioner argues (Pet. Br. 51-54) that, after the hearing, he should have been served with the Department of Justice recommendation, prior to its consideration by the selective service appeal board, so that he would have an opportunity before the Selective Service System to challenge the contents of the recommendation. Petitioner also urges that he should have had access to the report of the hearing officer which was transmitted to the Attorney General.<sup>20</sup> But under Section 6(j) of

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<sup>19</sup> Petitioner in Point II of his brief (Pet. Br. 41-51) attacks the Department of Justice's recommendation on the same grounds on which he attacks the final classification by the appeal board. As we have shown, that attack is not valid. It is therefore unnecessary to reach the question of the effect of an erroneous recommendation where other evidence in the record would justify the ultimate classification. Here both the recommendation and the facts of record support the conclusion reached.

<sup>20</sup> It would appear that petitioner is not cognizant of the fact (see Pet. Br. p. 7) that the hearing officer's report is no longer transmitted to the Selective Service System or included in a registrant's file for evaluation. Prior to June 18, 1952, selective service regulations provided in pertinent part as follows (32 C.F.R. [1951 ed.] 1626.25(d)):

"\* \* \* The appeal board shall place in the Cover Sheet (SSS Form No. 101) of the registrant both the letter containing the recommendation of the Department of Justice



the Act, *infra*, pp. 37-38, this report is merely a step in the process by which the Department obtains information on which to base its recommendation to the appeal boards. If we are right in the conclusion that the Department's recommendation need not be made available to registrants, surely a preliminary step in the process of formulating that recommendation requires no different treatment. We shall therefore treat this question on the basis of the primary issue of the requirements with respect to the recommendation itself without further reference to the hearing officer's report.

Since there is no statutory authority for the extra procedural step demanded by petitioner, and it has not been provided for in selective service regulations, petitioner is necessarily obliged to show that its absence results in such essential unfairness as would violate due process. Consideration of the function of the Department of Justice hearing in the selective service process shows that there is no warrant for such a contention.

In *United States v. Nugent*, 346 U.S. 1, 6-7, the respondents argued in effect that the Department

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and the report of the Hearing Officer of the Department of Justice."

This was amended by Executive Order (E.O. 10363, 17 F.R. 5456, June 18, 1952), prior to the rendition of the Department of Justice recommendation in this case on December 1, 1952 (R. 66-68), to provide (32 C.F.R. 1626.25(c)):

"\* \* \* The appeal board shall place in the Cover Sheet (SSS Form No. 101) of the registrant the letter containing the recommendation of the Department of Justice."

The hearing officer's report is thus no longer before the Selective Service System.



of Justice "hearing" was the equivalent of a "trial", and that due process therefore required that they be allowed to discover the contents of unevaluated F.B.I. reports made available to the hearing officer. This Court concluded that in view of the investigative-advisory nature of the "hearing" all of the "formal and litigious procedures" of a trial need not be accorded the registrant; that it was enough that the registrant be furnished an adequate resumé of adverse material in the possession of the hearing officer. The Court made the following observations regarding the function of the hearing in relation to the Selective Service System (*ibid.*, pp. 8-9):

The duty to classify—to grant or deny exemptions to conscientious objectors—rests upon the draft boards, local and appellate, and not upon the Department of Justice. \* \* \*

If the local board denies the claim, the responsibility for review, if sought, falls upon the appeal board. The Department of Justice takes no action which is decisive. Its duty is to advise, to render an auxiliary service to the appeal board in this difficult class of cases. Congress was under no compulsion to supply this auxiliary service—to provide for a more exhaustive processing of the conscientious objector's appeal. Registrants who claim exemption for some reason other than conscientious objection, and whose claims are denied, are entitled to no "hearing" before the De-

partment. Yet in this special class of cases, involving as it does difficult analyses of facts and individualized judgments, Congress directed that the assistance of the Department be made available whenever a registrant insists that his conscientious objection claim has been misjudged by his local board. Observers sympathetic to the problems of the conscientious objector have recognized that this provision in the statute improves the system of review by helping the appeal boards to reach a more informed judgment on the appealing registrant's claims. But it has long been recognized that neither the Department's "appropriate investigation" nor its "hearing" is the determinative investigation and the determinative hearing in each case. It has regularly been assumed that it is not the function of this auxiliary procedure to provide a full-scale trial for each appealing registrant.

Accordingly, the standards of procedure to which the Department must adhere are simply standards which will enable it to discharge its duty to forward sound advice, as expeditiously as possible, to the appeal board. \* \* \*

The proceeding conducted by the Department of Justice is "advice", not a determination of legal rights. The Department's recommendation is not binding on the Selective Service System and may be rejected either in whole or in part.<sup>21</sup> It is merely

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<sup>21</sup> Sec. 32 C.F.R. 1626.25 (c) *infra*, p. 40.

one factor to be considered by the appeal board, together with the registrant's entire file as well as general information concerning "economic, industrial, and social conditions" (32 C.F.R. 1626.24(b), *infra*, p. 38). The recommendation is thus not a subject of contest. This Court in analogous situations has refused to allow a separate hearing for the purpose of contesting the sufficiency of an advisory report which is not the functional equivalent of an administrative order. In discussing the advisory report of the Tariff Commission which is submitted to the President for his final action, this Court said in *Norwegian Nitrogen Co. v. United States*, 288 U. S. 294, 318:

\* \* \* Whatever the appropriate label, the kind of order that emerges from a hearing before a body with power to ordain is one that impinges upon legal rights in a very different way from the report of a commission which merely investigates and advises. The traditional forms of hearing appropriate to the one body are unknown to the other. What issues from the Tariff Commission as a report and recommendation to the President, may be accepted, modified or rejected. \* \* \*

Compare: *Chicago & Southern Air Lines Inc. v. Waterman Steamship Corp.*, 333 U.S. 103 (advice to the President in passing on foreign airline routes); *Williams v. New York*, 337 U.S. 241 (information and advice to judge on sentence to be imposed). Congress has reserved to the Selective

Service System alone the determinative function of classifying selective service registrants and the registrant has full opportunity to include his evidence and argument in the selective service file. No separate hearing need be conducted to meet the conclusions incorporated in a Department of Justice report which may or may not be acted upon in the discretion of the appeal board when it evaluates the entire file.

As more fully set forth in the brief for the United States in *Simmons v. United States*, No. 251, this term, Congress has provided the Selective Service System with a more comprehensive source of information and advice with respect to conscientious objector cases than with respect to other classifications because of the peculiarly subjective character of the issue involved. It was apparently felt that the selected lawyers, who for the most part contribute their services as Department of Justice hearing officers, could, in an informal type of interview, appraise the facts of a particular registrant's background and estimate whether his objections were of the "character" required, and whether they were presented in "good faith". This determination is reviewed by a Special Assistant to the Attorney General who checks it for form and substance and then formulates a recommendation which may or may not be that of the hearing officer (although in most cases it is). In this way a more uniform type of procedure is provided in this difficult area of judgment to reduce the chance of arbitrariness and unequal treatment. The whole

process is essentially the submission of the case for an expert opinion. The Act obviously did not contemplate that such opinion thereafter be litigated.

Petitioner's reliance on *Morgan v. United States*, 304 U. S. 1 (Pet. Br. 26, 53), is not well placed. That case was decided on the theory that a person affected by an administrative order should in all fairness have some indication of the proposals being considered before the order issues. This Court stated at 304 U.S. 18-19:

Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command.

No such reasonable opportunity was accorded appellants.

This is a far cry from the instant proceeding where the registrant had ample notice that the Selective Service System intended to classify him I-A. Where the issues are thus defined, this Court has held that no intermediate report at all is required. *National Labor Relations Board v. Mackay Radio and Telegraph Company*, 304 U.S. 333. See also *Public Service Corp. of New Jersey v. Securities and Exchange Commission*, 129 F. 2d 899 (C.A. 3), certiorari denied, 317 U. S. 691; *Local Government Board v. Arlidge*, [1915] A. C. 120.

Before a case goes to hearing before the Depart-

ment of Justice, a registrant has had an opportunity to present any facts he wishes before the local board, in his special form, and at a personal appearance if he so requests. Before the hearing, he may obtain notice of adverse information in his file and he may rebut such adverse information before the hearing officer. At the hearing, he can give full expression to his views. He thus is given full opportunity to present his side of the case. To require service of the Department's recommendation to the appeal board upon the registrant and to permit the registrant then to contest the recommendation would not involve new facts. It would merely add an additional step for the registrant to say that he disagrees with the recommendation if it is unfavorable, a fact which the mere assertion of the claim by the registrant has made clear. There is thus no necessity for this additional step, and no unfairness in its omission.

Due process is a matter to be determined in context. *Federal Communications Commission v. WJR, the Goodwill Station*, 337 U.S. 265, 276-277. Here we are dealing with a procedure which is itself a special privilege as to an exemption which is a matter of legislative grace. Due process in such a context cannot be determined by reference to a dissimilar type of proceeding which is designed to meet far different problems. As the records in the cases now before this Court show, the special proceeding established by Congress already results in fairly long delays in the classification of persons claiming conscientious objector status. Further

delays are not to be encouraged. A registrant asserting a claim to conscientious objection has, under present procedures, ample opportunity to present his case and to rebut adverse information. The standards of due process have thus been more than adequately met.

#### CONCLUSION

It is therefore respectfully submitted that the judgment of the court below should be affirmed.

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JANUARY, 1955.



## APPENDIX

## STATUTE AND REGULATIONS INVOLVED

Universal Military Training and Service Act,  
62 Stat. 604, 612; 65 Stat. 75, 86:

Section 6(j) [50 U.S.C. App. 456(j)]:

Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such ci-

vilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate \* \* \*. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate \* \* \*.

If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. \* \* \*

32 C.F.R. 1626.24(b) provides:

(b) In reviewing the appeal, the appeal board shall not receive or consider any information which is not contained in the record received from the local board except (1) the advisory recommendation from the Department of Justice under §1626.25, and (2) general information concerning economic, industrial, and social conditions.

32 C.F.R. [1954 Supp.] 1626.25 provides in pertinent part:

(a) \* \* \*

(2) If the registrant has claimed, by reason of religious training and belief, to be conscientiously opposed to participation in any form and by virtue thereof to be conscientiously opposed to participation in both combatant and noncombatant training and service in the armed forces, and the local board has classified the registrant in Class I-O, the appeal board shall proceed with the classification of

the registrant. If, in such a case, the local board has classified the registrant in any class other than Class I-O, the appeal board shall transmit the entire file to the United States Attorney for the Federal judicial district in which the appeal board has jurisdiction for the purpose of securing an advisory recommendation from the Department of Justice.

(b) Whenever a registrant's file is forwarded to the United States Attorney in accordance with paragraph (a) of this section, the Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrant. The registrant shall be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the appeal board (1) that if the registrant is inducted into the armed forces, he shall be assigned to noncombatant service, or (2) that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of induction be ordered by his local board to perform for a period of twenty-four consecutive months civilian work contributing to the maintenance of the national health, safety, or interest. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the

appeal board that such objections be not sustained.

(c) Upon receipt of the report of the Department of Justice, the appeal board shall determine the classification of the registrant, and in its determination it shall give consideration to, but it shall not be bound to follow, the recommendation of the Department of Justice. The appeal board shall place in the Cover Sheet (SSS Form No. 101) of the registrant the letter containing the recommendation of the Department of Justice.